FINAL

RCRA CIVIL PENALTY POLICY

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I. INTRODUCTION

To respond to the problem of improper management of hazardous waste, Congress amended the Solid Waste Disposal Act with the Resource Conservation and Recovery Act (RCRA) of 1976. Although the Act has several objectives, Congress' overriding purpose in enacting RCRA was to establish the statutory framework for a national system that would ensure the proper management of hazardous waste.

Section 3008(a) of RCRA, 42 U.S.C. §6928(a), provides that if any person is in violation of a requirement of Subtitle C, the Administrator of the Environmental Protection Agency (EPA) may, among other options, issue an order requiring compliance immediately or within a specified time period. Section 3008(c), 42 U.S.C. §6928(c), provides that any order issued may assess a penalty, taking into account:

- the seriousness of the violation, and
- any good faith efforts to comply with the applicable requirements.

Section 3008(g) further provides EPA with the authority to assess civil penalties of up to $25,000 per day of violation.

This document sets forth the Agency's policy for assessing administrative penalties under RCRA, 42 U.S.C. §6901 et seq.*/ The purpose of the policy is to assure that RCRA civil penalties are assessed in a fair and consistent manner; that penalties are appropriate for the gravity of the violation committed; that economic incentives for noncompliance with RCRA are eliminated; that persons are deterred from committing RCRA violations; and that compliance is achieved.

The policy provides internal guidelines to aid EPA compliance/enforcement personnel in assessing appropriate penalties. It also provides a mechanism whereby compliance/enforcement personnel may, within specified boundaries, exercise discretion in negotiating administrative consent agreements and orders, and otherwise modify the proposed penalty when special circumstances warrant it. The policy will be supplemented as necessary.

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*/ Because there is no RCRA judicial civil penalty policy, compliance/enforcement personnel may rely on this administrative civil penalty policy in assessing penalties in judicial cases.

This document does not discuss whether assessment of an administrative civil penalty is the correct enforcement response to a particular violation. Rather, this document focuses on determining what the proper civil penalty should be once a decision has been made that a civil penalty is the proper enforcement remedy to pursue. For guidance on when to assess administrative penalties, consult the following:

- Guidance on Developing Compliance Orders Under Section 3008 of RCRA, July 7, 1981;*/
- RCRA, Section 3005(e); Continued Operation of Hazardous Waste Facilities by Owners or Operators Who Have Failed to Achieve Interim Status, July 31, 1981;
- Guidance on Developing Compliance Orders Under Section 3008 of RCRA; Enforcement of Ground-Water Monitoring Requirements at Interim Status Facilities, January 22, 1982;*/
- Guidance on Developing Compliance Orders Under Section 3008 of RCRA; Enforcement of the Financial Responsibility Requirements Under Subpart H of 40 CFR Parts 264 and 265, October 6, 1982;*/
- Guidance on Developing Compliance Orders Under Section 3008 of RCRA; Failure to Submit and Submittal of Incomplete Part B Permit Applications, September 9, 1983.

The discussions of specific penalty assessments set out in the second and fifth guidances, above, are superseded by this document. The portions of these guidances which do not address specific penalty assessments remain operative.

The RCRA Civil Penalty Policy is immediately applicable and should be used to calculate penalties for all RCRA administrative actions instituted after the date of the policy, regardless of the date of violation.

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*/ These three guidances classify RCRA violations as either Class I, II, or III, and state that Section 3008 compliance orders should generally be issued to address Class I, Class II, and continued or flagrant Class III violations. The Agency is in the process of developing a RCRA enforcement response policy which could change the current scheme for classifying and responding to violations. Compliance/enforcement personnel should continue to rely on the existing guidance until the new enforcement response policy is issued.

The procedures set out in this document are intended solely for the guidance of government personnel. They are not intended and cannot be relied upon to create rights, substantive or procedural, enforceable by any party in litigation with the United States. The Agency reserves the right to act at variance with this policy and to change it at any time without public notice.

II. RELATIONSHIP TO AGENCY PENALTY POLICY

The RCRA Civil Penalty Policy sets forth a system of penalty assessment consistent with the established goals of the Agency's new civil penalty policy which was issued on February 16, 1984. These goals consist of:

- Deterrence;
- Fair and equitable treatment of the regulated community; and
- Swift resolution of environmental problems.

The RCRA penalty policy also adheres to the Agency policy's framework for assessing civil penalties by:

- Calculating a preliminary deterrence amount consisting of a gravity component;
- Determining any economic benefit of noncompliance; and
- Applying adjustment factors to account for differences between cases.

III. SUMMARY OF THE POLICY

The penalty calculation system consists of (1) determining a gravity-based penalty for a particular violation, (2) considering economic benefit of noncompliance where appropriate, and (3) adjusting the penalty for special circumstances. Two factors are considered in determining the gravity-based penalty:

- potential for harm; and
- extent of deviation from a statutory or regulatory requirement.

These two factors constitute the seriousness of a violation under RCRA, and have been incorporated into the following penalty matrix from which the gravity-based penalty will be chosen:

MATRIX

Extent of Deviation from Requirement

Potential for Harm	MAJOR	MODERATE	MINOR
MAJOR	$25,000 to 20,000	$19,999 to 15,000	$14,999 to 11,000
MODERATE	$10,999 to 8,000	$7,999 to 5,000	$4,999 to 3,000
MINOR	$2,999 to 1,500	$1,499 to 500	$499 to 100

Where a company has derived significant savings by its failure to comply with RCRA requirements, the amount of economic benefit from noncompliance gained by the violator will be calculated and added to the gravity-based penalty. A formula for computing economic benefit is included.

After determining the appropriate penalty based on gravity and, where appropriate, economic benefit, the penalty may be adjusted upwards or downwards to reflect particular circumstances surrounding the violation. The factors that should be considered are:

- Good faith efforts to comply/lack of good faith;
- Degree of willfulness and/or negligence;
- History of noncompliance;
- Ability to pay; or
- Other unique factors.

These factors (with the exception of factors which increase the penalty such as history of noncompliance) generally will be

considered after proposing the penalty in the complaint, i.e., during the settlement stage. However, the Regions have the discretion to apply the adjustment factors when determining the initial penalty, if the information supporting adjustment is available.

The policy also discusses the appropriate assessment of multiple and multi-day penalties.

A detailed discussion of the policy follows. In addition, this document includes a few hypothetical cases where the step-by-step assessment of penalties is illustrated. The steps included are choosing the correct penalty cell on the matrix, calculating the economic benefit of noncompliance, where appropriate, and adjusting the penalty assessment before and after issuance of the complaint.

IV. ADMINISTRATIVE RECORD

In order to support the penalty proposed in the complaint, compliance/enforcement personnel must include in the case file an explanation of how the proposed penalty amount was calculated. The case file must also include a justification of any adjustments made after issuance of the complaint. In ongoing cases, the assessment rationale would be exempt from the mandatory disclosure requirements of the Freedom of Information Act, 5 U.S.C. 552, because producing such records would interfere with enforcement proceedings, 40 CFR §2.118(a)(7). Nevertheless, the Agency may elect to release penalty information after a complaint has been issued. Once an enforcement action has been completed, the justification of the penalty assessment would no longer be exempt from disclosure.

A penalty computation worksheet to be included in the case file is attached. (See: Appendix.)

V. DETERMINATION OF GRAVITY-BASED PENALTY

RCRA Section 3008(c) states that the seriousness of the violation must be taken into account in assessing penalties. The gravity-based penalty is determined according to the seriousness of the violation. The seriousness of a violation is based on two factors which are used to assess the appropriate gravity-based penalty:

- potential for harm; and
- extent of deviation from a statutory or regulatory requirement.

A. Potential for Harm

The RCRA requirements were promulgated in order to prevent harm to human health and the environment. Thus, noncompliance with any RCRA requirement could result in a situation where there is a potential for harm. The potential for harm resulting from a violation may be determined by:

- the likelihood of exposure to hazardous waste posed by noncompliance, or
- the adverse effect noncompliance has on the statutory or regulatory purposes or procedures for implementing the RCRA program.

By answering questions like the following, compliance/enforcement personnel can determine the likelihood of exposure in a particular situation:

- What is the quantity of waste?
- Is human life or health potentially threatened by the violation?
- Are animals potentially threatened by the violation?
- Are any environmental media potentially threatened by the violation?

There may be violations where the likelihood of exposure resulting from the violation is small, difficult to quantify, or nonexistent, but which nevertheless may disrupt the RCRA program (e.g., failure to comply with financial requirements). This disruption may also present a potential for harm to human health or the environment, due to the adverse effect noncompliance can have on the statutory or regulatory purposes or procedures for implementing the RCRA program.

For each of the above considerations -- likelihood of exposure and adverse effect on implementing the RCRA program -- the emphasis is placed on the potential harm posed by a violation rather than on whether harm actually occurred. The presence or absence of direct harm in a noncompliance situation is something over which the violator may have no control. Such violators should not be rewarded by assessing lower penalties when the violations do not result in actual harm.

Compliance/enforcement personnel should evaluate whether the potential for harm is major, moderate, or minor in a particular

situation. The degree of potential harm represented by each category is defined as:

- MAJOR (1) violation poses a substantial likelihood of exposure to hazardous waste; and/or

  (2) the actions have or may have a substantial adverse effect on the statutory or regulatory purposes or procedures for implementing the RCRA program.

- MODERATE (1) the violation poses a significant likelihood of exposure to hazardous waste; and/or

  (2) the actions have or may have a significant adverse effect on the statutory or regulatory purposes or procedures for implementing the RCRA program.

- MINOR (1) the violation poses a relatively low likelihood of exposure to hazardous waste; and/or

  (2) the actions have or may have an adverse effect on the statutory or regulatory purposes or procedures for implementing the RCRA program.

The following examples illustrate the difference between major, moderate, and minor potential for harm.

Example 1 - Major Potential for Harm

40 CFR §265.143 requires that owners or operators of hazardous waste facilities establish financial assurance for closure of their facilities. The purpose of this requirement is to assure that funds will be available for proper closure of facilities. Under §265.143(a)(2), the wording of a trust agreement establishing financial assurance for closure must be identical to the wording specified in 40 CFR §264.151(a)(1). Failure to word the trust agreement as required may appear inconsequential. However, even a slight alteration of the language could change the legal effect of the financial instrument so that it would no longer satisfy the intent of the regulation. When the language of the agreement differs from the requirement such that funds would not be available to close the facility properly, the lack of identical wording would have a substantial adverse effect on the regulatory scheme. This violation would be assigned to the major potential for harm category.

Example 2 - Moderate Potential for Harm

Under 40 CFR §262.34, a generator may accumulate hazardous waste on-site for 90 days or less without having interim status or a permit provided that among other requirements, each container

or tank of waste is labeled or marked clearly with the words, "Hazardous Waste." In a situation where a generator is storing compatible waste, has labeled half of its containers, and has clearly identified its storage area as a hazardous waste storage area, there is some indication that the unlabeled containers hold hazardous waste. However, because there is a chance that the unlabeled containers could be removed from the storage area, and that without labels the Agency would not know if the waste had been stored for more than 90 days, this situation poses a significant likelihood of exposure to hazardous waste (although the likelihood is not as great as it would be if neither the storage area nor any of the containers were marked). The moderate potential for harm category would be appropriate in this case.

Example 3 - Minor Potential for Harm

Owners or operators of hazardous waste facilities must, under 40 CFR §265.53, submit a copy of their contingency plans to all local police departments, fire departments, hospitals, and State and local emergency response teams that may be called upon to provide emergency services. If a facility has a complete contingency plan, including a description of arrangements agreed to by local entities to coordinate emergency services (§265.52), but failed to submit copies to all of the local entities, there is a potential for harm. However, because a complete plan exists and arrangements with all of the local entities have been agreed to, the likelihood of exposure and adverse effect on the implementation of RCRA would be relatively low. The minor potential for harm category would be appropriate in this situation.

B. Extent of Deviation from Requirement

The "extent of deviation" from RCRA or its regulatory requirements relates to the degree to which the violation renders inoperative the requirement violated. In any violative situation, a range of potential noncompliance with the subject requirement exists. In other words, a violator may be substantially in compliance with the provisions of the requirement or it may have totally disregarded the requirement (or a point in between). As with potential for harm, extent of deviation may be either major, moderate, or minor. In determining the extent of deviation, the following definitions should be used:

- MAJOR the violator deviates from the requirements of the regulation or statute to such an extent that there is substantial noncompliance.

- MODERATE the violator significantly deviates from the requirements of the regulation or statute but some of the requirements are implemented as intended.

- MINOR the violator deviates somewhat from the regulatory or statutory requirements but most of the requirements are met.

A few examples will help demonstrate how the evaluation procedure described above is used to select a category:

Example 1 - Closure Plan

40 CFR §265.112 requires that owners or operators of treatment, storage, and disposal facilities have a written closure plan. This plan must identify the steps necessary to completely or partially close the facility at any point during its intended operating life and to completely close the facility at the end of its intended operating life. Possible violations of the requirements of this regulation range from having no closure plan at all to having a plan which is somewhat inadequate (e.g., failure to include a schedule for final closure, while complying with the other requirements). These violations might be assigned to the "major" and "minor" categories respectively. A violation between these extremes might involve failure to modify a plan for increased decontamination activities as a result of a spill on-site.

Example 2 - Failure to Maintain Adequate Security

40 CFR §265.14 requires that owners or operators of treatment, storage and disposal facilities take reasonable care to keep unauthorized persons from entering the active portion of a facility where injury could occur. Generally, a physical barrier must be installed and any access routes conscientiously controlled.

The range of potential noncompliance with the security requirements is quite broad. In a particular situation, the violator may prove to have totally failed to supply any security systems. Total noncompliance with regulatory requirements such as this would result in classification into the major category. In contrast, the violation may consist of a small oversight such as failing to lock an access route on a single occasion. Obviously, the degree of noncompliance in the latter situation is less significant. With all other factors being equal, the less significant noncompliance should draw a smaller penalty assessment. In the matrix system this is achieved by choosing the minor category.

C. Penalty Assessment Matrix

Each of the above factors--potential for harm and extent of deviation from a requirement--forms one of the axes of the penalty assessment matrix. The matrix has nine cells, each containing a penalty range. The specific cell is chosen after determining which category (major, moderate, or minor) is appropriate for the potential for harm factor, and which category is appropriate for the extent of deviation factor. The complete matrix is illustrated below:

Extent of Deviation from Requirement

Potential for Harm	MAJOR	MODERATE	MINOR
MAJOR	$25,000 to 20,000	$19,999 to 15,000	$14,999 to 11,000
MODERATE	$10,999 to 8,000	$7,999 to 5,000	$4,999 to 3,000
MINOR	$2,999 to 1,500	$1,499 to 500	$499 to 100

The lowest cell (minor potential for harm/minor extent of deviation) contains a penalty range from $100 to $499. Provision for this low range of penalties has been made because the assessment of low penalties has proven to be an effective compliance tool. The highest cell (major potential for harm/major extent of deviation) is limited by the maximum statutory penalty allowance of $25,000 per day of violation.

The selection of the exact penalty amount within each cell is left to the discretion of compliance/enforcement personnel in any given case. Compliance/enforcement personnel should be careful to consider the seriousness of the violation only in selecting the penalty amount within the range. The reasons the violation was committed, the intent of the violator, and other factors related to the violator are not considered at this point; they will be considered at the adjustment stage.

VI. MULTIPLE AND MULTI-DAY PENALTIES

A. Assessing Multiple Penalties

In certain situations, EPA may find that a particular firm has violated several RCRA regulations. A separate penalty should be assessed for each violation that results from an independent act (or failure to act) by the violator and is substantially distinguishable from any other charge in the complaint for which a penalty is to be assessed. A given charge is independent of, and substantially distinguishable from, any other charge when it requires an element of proof not needed by the others. In many cases, violations of different sections of the regulations constitute independent and substantially distinguishable violations. For example, failure to implement a groundwater monitoring program, 40 CFR §265.90, and failure to have a written closure plan, 40 CFR §265.112, are violations which result from different sets of circumstances and which pose separate risks. In the case of a firm which has violated both of these sections of the regulations, a separate count should be charged for each violation. For penalty purposes, each of the violations should be assessed separately and the amounts totalled.

It is also possible that different violations of the same section of the regulations could constitute independent and substantially distinguishable violations. For example, in the case of a firm which has open containers of hazardous waste in its storage area, 40 CFR §265.173(a), and which also ruptured different hazardous waste containers while moving them on site, 40 CFR §265.173(b), there are two independent acts. The violations result from two sets of circumstances (improper storage and improper handling) and pose distinct risks. In this situation, two counts with two separate penalties would be appropriate. For penalty purposes, each of the violations should be assessed separately and the amounts totalled.

Multiple penalties also should be assessed where one company has violated the same requirement in substantially different locations. An example of this type of violation is failure to clean up discharged hazardous waste during transportation, 40 CFR §263.31. A transporter who did not clean up waste discharged in two separate locations during the same trip should be charged with two counts. In these situations, the separate locations present separate and distinct risks to public health and the environment. Thus, separate penalty assessments are justified.

In general, multiple penalties are not appropriate where the violations are not independent or substantially distinguishable. Where a charge derives from or merely restates another charge, a separate penalty is not warranted. If an owner/operator of a storage facility failed to specify in his waste analysis plan the parameters for which each hazardous waste will be analyzed, 40 CFR §265.13(b)(1), and failed to specify the frequency with which the initial analysis of the waste will be repeated, 40 CFR §265.13(b)(4), he has violated the requirement that he develop an adequate waste analysis plan. The violations result from the same factual event (failure to develop an adequate plan), and pose one risk (storing waste improperly due to inadequate analysis). In this situation, both sections violated should be cited in the complaint, but one penalty, rather than two, should be assessed. The fact that two separate sections were violated will be taken into account in choosing higher "potential for harm" and "extent of deviation" categories on the penalty matrix.

B. Assessing Multi-Day Violations

RCRA provides EPA with the authority to assess civil penalties of up to $25,000 per violation per day, with each day that non-compliance continues to be assessed as a separate violation. Multi-day penalties should generally be calculated in the case of continuing egregious violations. However, per day assessment may be appropriate in other cases.

In the case of continuing violations, the Agency has the authority to calculate penalties based on the number of days of violation since the effective date of the requirement and up to the date of coming into compliance. The gravity-based penalty derived from the penalty matrix should be multiplied by the number of days of violation.

VII. EFFECT OF ECONOMIC BENEFIT OF NONCOMPLIANCE

The new Agency civil penalty policy mandates the consideration of the economic benefit of noncompliance to a violator when penalties are assessed. In accordance with the goals of the Agency policy, the RCRA Civil Penalty Policy sets forth a system for calculating the economic benefit of noncompliance with RCRA requirements.

An "economic benefit component" should be calculated and added to the gravity-based penalty when a violation results in significant economic benefit to the violator. The following are examples of regulatory areas which should undergo an economic benefit analysis:

- Groundwater monitoring
- Financial requirements
- Closure/post-closure
- Waste determination
- Waste analysis
- Clean-up of discharge
- Part B submittals

For many RCRA requirements, the economic benefit of noncompliance may be difficult to quantify or relatively insignificant. Examples of these types of violations are failure to submit a report or failure to maintain records. In general, compliance/enforcement personnel need not calculate the benefit component where it appears that the amount of that component is likely to be less than $2,500. This figure is more appropriate for the RCRA program than the $10,000 cut-off in the Agency policy because of the amount of economic benefit associated with many RCRA violations.

It is generally the Agency's policy not to settle cases (i.e., the penalty amount) for an amount less than the economic benefit of noncompliance. However, the new Agency civil penalty policy does set out three general areas where settling the total penalty amount for less than the economic benefit may be appropriate. The RCRA policy has added a fourth exception for cases where ability to pay is a factor. The four exceptions are as follows:

- the economic benefit component consists of an insignificant amount (i.e., less than $2,500);
- there are compelling public concerns that would not be served by taking a case to trial;
- it is highly unlikely that EPA will be able to recover the economic benefit in litigation;
- the company has documented an inability to pay the total proposed penalty.

If a case is settled for less than the economic benefit component, a justification must be included in the case file.

A. Types of Economic Benefit

Compliance/enforcement personnel should examine two types of economic benefit from noncompliance in determining the economic benefit component:

- Benefit from delayed costs; and
- Benefit from avoided costs.

Delayed costs are expenditures which have been deferred by the violator's failure to comply with the requirements. The violator eventually will have to spend the money in order to achieve compliance. Delayed costs are the equivalent of capital costs. Examples of violations which result in savings from delayed costs are:

- Failure to install ground-water monitoring equipment;
- Failure to submit a Part B permit application; and
- Failure to develop a waste analysis plan.

Avoided costs are expenditures which are nullified by the violator's failure to comply. These costs will never be incurred. Avoided costs are the equivalent of operating and maintenance costs. Examples of violations which result in savings from avoided costs are:

- Failure to perform annual and semi-annual ground-water monitoring sampling and analysis;
- Failure to follow the approved closure plan in removing waste from a facility, where reremoval is not possible; and
- Failure to perform waste analysis before adding waste to tanks, waste piles, incinerators, etc.

B. Calculation of Economic Benefit

Because the savings that are derived from delayed costs differ from those derived from avoided costs, the economic benefit from delayed and avoided costs are calculated in a different manner. For avoided costs, the economic benefit equals the cost of complying with the requirement, adjusted to reflect income tax effects on the

company. For delayed costs, the economic benefit does not equal the cost of complying with the requirements, since the violator will eventually have to spend the money to achieve compliance. The economic benefit for delayed costs consists of the amount of interest on the unspent money that reasonably could have been earned by the violator during noncompliance. If noncompliance has continued for more than a year, compliance/enforcement personnel should calculate the economic benefit of both the delayed and avoided costs for each year.

The following formula is provided to help calculate the economic benefit component:

Economic
Benefit = Avoided Costs (1-T) + (Delayed Costs x Interest Rate)

In the above formula, T represents the firm's marginal tax rate. In the absence of specific information regarding the violator's tax status, compliance/enforcement personnel should assume that the company's marginal tax rate is 46%, the Federal corporate tax rate for firms whose before-tax profits are greater than $100,000. Thus, compliance/enforcement personnel should assume that T = .46.

Compliance/enforcement personnel should calculate interest by using the interest rate charged by the Internal Revenue Service (IRS) for delinquent accounts. The IRS interest rates for 1980 through 1984 are as follows:

2/1/80	-	1/31/82	12%
2/1/82	-	12/31/82	20%
1/1/83	-	6/30/83	16%
7/1/83	-	6/30/84	11%

Interest rates for years other than those listed above are available from your local IRS office.

The economic benefit formula provides a reasonable estimate of the economic benefit of noncompliance. If a respondent believes that the economic benefit it derived from noncompliance differs from the estimated amount, it should present information documenting its actual savings to compliance/ enforcement personnel at the settlement stage.

See Section X of this document for hypothetical applications of the economic benefit formula. The Agency plans to develop additional guidance on calculating the economic benefit of noncompliance, including identifying sources of cost information

for various regulatory areas, and providing an Agency methodology for computing economic benefit. For this reason, the economic benefit formula set out in this document is for interim use only.

VIII. ADJUSTMENT FACTORS AND EFFECT OF SETTLEMENT

A. Adjustment Factors

As mentioned in Section V of this document, the seriousness of the violation is considered in determining the gravity-based penalty. The reasons the violation was committed, the intent of the violator, and other factors related to the violator are not considered in choosing the appropriate penalty from the matrix. However, any system for calculating penalties must have enough flexibility to make adjustments that reflect legitimate differences between similar violations. RCRA §3008(c) states that in assessing penalties, EPA must take into account any good faith efforts to comply with the applicable requirements. The new Agency civil penalty policy sets out several other adjustment factors to consider. These include the degree of willfulness and/or negligence, history of noncompliance, ability to pay, and other unique factors.

The adjustment factors can increase, decrease or have no effect on the penalty amount to be paid by the violator. Note, however, that no upward adjustment can result in a penalty greater than the statutory maximum of $25,000 per day of violation. Adjustment of a penalty may take place before issuing the proposed penalty in the complaint, or after assessment of the proposed penalty (as part of the settlement process). Most factors, in practice, will be considered at the settlement stage with the burden of proof for mitigation on the respondent. However, penalties may be adjusted before determining the proposed assessment if the necessary information is available. Compliance/enforcement personnel should use whatever information on the violator (and violation) is available at the time of initial assessment. Issuance of a complaint should not be delayed in order to collect additional adjustment information. The history of noncompliance factor should be used only to increase a penalty; the ability to pay factor should be used only to decrease a penalty. Justification for adjustments must be included in the case file.

In general, these adjustment factors will apply only to the gravity-based penalty derived from the matrix, and not to the economic benefit component if calculated. (See Section VII of this document for exceptions.)

Application of the adjustment factors is cumulative, i.e., more than one factor may apply in a case. For example, if the base penalty derived from the matrix is $9,500, and upward

adjustments of 10% will be made for both history of noncompliance and degree of willfulness and/or negligence, the total adjusted penalty would be $11,400 ($9,500 + 20%).

The following discussion of the factors to consider is consistent with the new Agency civil penalty policy. For the purposes of simplification, the percentage ranges for the adjustment factors in the Agency policy have been altered slightly for use in the RCRA Civil Penalty Policy.

At this stage of the RCRA program it is difficult to determine what types of non-monetary alternatives or alternative payments would foster the goals of the program. As compliance/enforcement personnel gain more experience in enforcing RCRA, use of these alternatives may prove to be advantageous to the public interest. Until such time, these alternatives, as set forth in the new Agency civil penalty policy, are not an option under the RCRA Civil Penalty Policy.

(1) Good faith efforts to comply/lack of good faith (Degree of cooperation/noncooperation)

Under §3008(a) of RCRA, good faith efforts to comply with the requirements must be considered in assessing a penalty. Good faith can be manifested by the violator promptly reporting its noncompliance. Assuming such self-reporting is not required by law, this behavior can result in mitigation of the penalty. Prompt correction of environmental problems also can constitute good faith. Lack of good faith, on the other hand, can result in an increased penalty. Compliance/enforcement personnel have discretion to make adjustments up or down by as much as 25% of the gravity-based penalty. Adjustments may be made in the 26%-40% range of the gravity-based penalty, but only in unusual circumstances. No downward adjustment should be made if the good faith efforts to comply primarily consist of coming into compliance.

(2) Degree of willfulness and/or negligence

Section 3008(d) of RCRA provides for criminal penalties for "knowing" violations. However, there may be instances of culpability which do not meet the criteria for criminal action. In cases where administrative civil penalties are sought for actions of this type, the penalty may be adjusted upward for willfulness and/or negligence. Conversely, although RCRA is a strict liability statute, there may be instances where penalty mitigation may be justified based on the lack of willfulness and/or negligence.

In assessing the degree of willfulness and/or negligence, the following factors should be considered, as well as any others deemed apropriate:

- how much control the violator had over the events constituting the violation;
- the forseeability of the events constituting the violation;
- whether the violator took reasonable precautions against the events constituting the violation;
- whether the violator knew or should have known of the hazards associated with the conduct;
- whether the violator knew of the legal requirement which was violated.

It should be noted that this last factor, lack of knowledge of the legal requirement, should never be used as a basis to reduce the penalty. To do so would encourage ignorance of the law. Rather, knowledge of the law should serve only to enhance the penalty.

The amount of control which the violator had over how quickly the violation was remedied also is relevant in certain circumstances. Specifically, if correction of the environmental problem was delayed by factors which the violator can clearly show were not reasonably foreseeable and out of his control, the penalty may be reduced.

Subject to the above guidance, compliance/enforcement personnel have discretion in all cases to make adjustments up or down by as much as 25% of the gravity-based penalty. Adjustments in the 26-40% range may be made, but only in unusual circumstances.

(3) History of noncompliance (upward adjustment only)

Where a party previously has violated RCRA or State hazardous waste law at the same or a different site, this is usually clear evidence that the party was not deterred by the previous enforcement response. Unless the previous violation was caused by factors entirely out of the control of the violator, this is an indication that the penalty should be adjusted upwards.

Some of the factors the compliance/enforcement personnel should consider are the following:

- how similar the previous violation was;
- how recent the previous violation was;
- the number of previous violations;
- violator's response to previous violation(s) in regard to correction of problem.

A violation generally should be considered "similar" if the Agency's or State's previous enforcement response should have alerted the party to a particular type of compliance problem. A prior violation of the same or a different RCRA or State requirement would constitute a similar violation.

For purposes of the section, a "prior violation" includes any act or omission for which a formal enforcement response has occurred (e.g., EPA or State notice of violation, warning letter, complaint, consent agreement, final order, or consent decree). It also includes any act or omission for which the violator has previously been given written notification, however informal, that the Agency believes a violation exists.

In the case of large corporations with many divisions or wholly-owned subsidiaries, it is sometimes difficult to determine whether a previous instance of noncompliance should trigger the adjustments described in this section. New ownership often raises similar problems. In making this determination, compliance/enforcement personnel should ascertain who in the organization had control and oversight responsibility for compliance with RCRA or other environmental laws. In those cases the violation will be considered part of the compliance history of that regulated party.

In general, compliance/enforcement personnel should begin with the assumption that if the same corporation was involved, the adjustments for history of noncompliance should apply. In addition, compliance/enforcement personnel should be wary of a party changing operators or shifting responsibility for compliance to different persons or entities as a way of avoiding increased penalties. The Agency may find a consistent pattern of noncompliance by many divisions or subsidiaries of a corporation even though the facilities are at different geographic locations. This often reflects, at best, a corporate-wide indifference to environmental protection. Consequently, the adjustment for history of noncompliance probably should apply unless the violator can demonstrate that the other violating corporate facilities are independent.

Subject to the above guidance, compliance/enforcement personnel have discretion to make upward adjustments by as much as 25% of the gravity-based penalty. Adjustments for this factor in the 26-40% range may be made, but only in unusual circumstances.

(4) Ability to pay (downward adjustment only)

The Agency generally will not request penalties that are clearly beyond the means of the violator. Therefore EPA should consider the ability of a violator to pay a penalty. At the same time, it is important that the regulated community not see the violation of environmental requirements as a way of aiding a financially troubled business. EPA reserves the option, in appropriate circumstances, to seek penalties that might put a company out of business. It is unlikely, for example, that EPA would reduce a penalty where a facility refuses to correct a serious violation. The same could be said for a violator with a long history of previous violations. That long history would demonstrate that less severe measures are ineffective.

The burden to demonstrate inability to pay rests on the respondent, as it does with any mitigating circumstances. Thus, a company's inability to pay usually will be considered at the settlement stage, and then only if the issue is raised by the respondent. If the respondent fails to provide sufficient information, then compliance/enforcement personnel should disregard this factor in adjusting the penalty. The National Enforcement Investigations Center (NEIC) has developed the capability to assist the Regions in determining a firm's ability to pay.

When it is determined that a violator cannot afford the penalty prescribed by this policy, or that payment of all or a portion of the penalty will preclude the violator from achieving compliance or from carrying out remedial measures which the Agency deems to be more important than the deterrence effect of the penalty (e.g., payment of penalty would preclude proper closure/post-closure), the following options may be considered:

- Consider a delayed payment schedule. Such a schedule might even be contingent upon an increase in sales or some other indicator of improved business.
- Consider an installment payment plan with interest.
- Consider straight penalty reductions as a last recourse.

The amount of any downward adjustment of the penalty is dependent on the individual financial facts of the case.

(5) Other unique factors

This policy allows an adjustment for unanticipated factors which may arise on a case-by-case basis. Compliance/ enforcement personnel have discretion to make adjustments by as much as 25% of

the gravity-based penalty for such reasons. Adjustments for these factors in the 26-40% range may be made, but only in unusual circumstances.

B. Effect of Settlement

The Consolidated Rules of Practice for the assessment of civil penalties incorporates the Agency policy of encouraging settlement of a proceeding at any time as long as the settlement is consistent with the provisions and objectives of RCRA and its regulations, 40 CFR §22.18(a). If the respondent believes that it is not liable or that the circumstances of its case justify mitigation of the penalty proposed in the complaint, the Rules of Practice allow it to request a settlement conference.

In many cases, the fact of a violation will be less of an issue than the amount of the penalty assessed. The burden always is on the violator to justify any mitigation of the assessed penalty. The mitigation, if any, of the penalty assessed in the complaint should follow the guidelines in the Adjustment Factors section of this document. The consent agreement must include a general statement of the reasons for mitigating the proposed penalty. Specific percentage reductions for individual factors need not be included.

IX. APPENDIX

PENALTY COMPUTATION WORKSHEET

Company Name: _____

Regulation Violated _____

Asessments for each violation should be determined on separate worksheets and totalled.

(If more space is needed, attach separate sheet.)

Part I - Seriousness of Violation Penalty

1. Potential for Harm: _____

2. Extent of Deviation: _____

3. Matrix Cell Range: _____

   Penalty Amount Chosen: _____

   Justification for Penalty Amount Chosen:

4. Per-Day Assessment: _____

Part II - Penalty Adjustments

	Percentage Change*	Dollar Amount
1. Good faith efforts to comply/lack of good faith:	_____	_____
2. Degree of willfulness and/or negligence:	_____	_____
3. History of noncompliance:	_____	_____
4. Other unique factors:	_____	_____

5. Justification for Adjustments:

* Percentage adjustments are applied to the dollar amount calculated on line 4, Part I.

PENALTY COMPUTATION WORKSHEET (cont.)

6. Adjusted Per-day Penalty (Line 4, Part I + Lines 1-4, Part II):	_____
7. Number of Days of Violation:	_____
8. Multi-day Penalty (Number of days x Line 6, Part II):	_____
9. Economic Benefit of Noncompliance:	_____
Justification:	
10. Total (Lines 8 + 9, Part II):	_____
11. Ability to Pay Adjustment:	
Justification for Adjustment:	_____
12. Total Penalty Amount (must not exceed $25,000 per day of violation):	_____

X. HYPOTHETICAL APPLICATIONS OF THE PENALTY POLICY

(1)(A) Violation: By notification dated August 15, 1980, Company A informed EPA that it conducts activities at its facility involving hazardous waste. In its notification, Company A indicated that it only generated hazardous waste. A 1983 inspection revealed that Company A was also storing hazardous waste, and had been since 1979. Company A had not filed a Part A Permit Application and was thus operating without a permit or interim status, in violation of §3005 of RCRA. In addition, Company A was in violation of §3010 of RCRA by failing to notify EPA that it was storing hazardous waste. Failure to notify and operating without a pemit or interim status constitute independent and substantially distinguishable violations. Each violation should be assessed separately and the amounts totalled. The inspectors indicated that Company A's storage area was secure and that, in general, the facility was well managed. However, there were a number of violations of the interim status standards. The complaint issued to Company A assessed penalties for the Part 265 violations as well as the statutory violations. This example will discuss the §3005 and §3010 violations only.

(B) Seriousness: (i) Failure to Notify: Potential for Harm. Moderate - EPA was prevented from knowing that hazardous waste was being stored at the facility. However, because Company A notified EPA that it was a generator, EPA did know that hazardous waste was handled at the facility. The violation may have a significant adverse effect on the statutory purposes or procedures for implementing the RCRA program. Extent of Deviation. Moderate - although Company A did not notify EPA that it stored hazardous waste, it did notify the Agency that is was a generator. Company A significantly deviated from the requirement, but part of the requirement was implemented as intended. (ii) Operating without a permit. Potential for Harm. Moderate - although Company A was operating without a permit or interim status, its facility generally was well managed. However, there were a number of Part 265 violations. This situation may pose a significant likelihood of exposure which may have a significant adverse effect on the statutory purposes for implementing the RCRA program. Extent of Deviation. Major - substantial noncompliance with the requirement because Company A did not notify EPA that it stored hazardous waste, and did not submit a Part A.

(C) Gravity-based Penalty: (i) Failure to notify. Moderate potential for harm and moderate extent of deviation lead one to the cell with the range of $5,000 to $7,999. The mid-point is $6,500. (ii) Operating without a permit. Moderate potential for harm and major extent of deviation lead one to the cell with the range of $8,000 to $10,999. The midpoint is $9,500. (iii) Total penalty: $6,500 + $9,500 = $16,000.

(D) Settlement adjustment: Company A raised and documented that it had cash flow problems. It did not convince EPA that the penalty should be mitigated. An installment plan was accepted by both parties as a means of payment. Penalty remained at $16,000.

(2)(A) Violation: Company B failed to prevent unknowing entry of persons onto the active portion of its surface impoundment facility. The fence surrounding the area had several holes. 40 CFR §265.14.

(B) Seriousness: Potential for Harm. Major - some children already have entered the area; potential for harm due to exposure to waste may be substantial because of the lack of adequate security around the site. Extent of Deviation. Moderate - there is a fence, but it has holes. Significant degree of deviation, but part of the requirement was implemented.

(C) Gravity-based Penalty: Major potential for harm and moderate extent of deviation yield the penalty range of $15,000 to $19,999. The midpoint is $17,500.

(D) Pre-complaint Adjustment: During the inspection of the facility, EPA discovered that the operator of Company B had been made aware of the above occurrence more than three months earlier, but had failed to repair the fence or increase security in that area. The penalty is adjusted upwards 25% for willfulness and/or negligence. $17,500 + $4,375 = $21,875. [Penalty calculation using the Penalty Computation Worksheet follows this hypothetical.]

(E) Settlement Adjustment: Company B gave evidence at settlement of labor problems with security officers and reordering and delivery delays for a new fence. Company B was very cooperative and stated that a new fence had been installed after issuance of the complaint and that

security would be provided for by another company in the near future. Even though the company was very cooperative, its actions were only those required under the regulations. No justification for mitigation for good faith efforts to comply exists. No change in $21,875 penalty.

PENALTY COMPUTATION WORKSHEET

Company Name: Company B

Regulation Violated 265.14

Asessments for each violation should be determined on separate worksheets and totalled.

(If more space is needed, attach separate sheet.)

Part I - Seriousness of Violation Penalty

1. Potential for Harm: Major
2. Extent of Deviation: Moderate
3. Matrix Cell Range: $15,000 - $19,999

Penalty Amount Chosen: $17,500

Justification for Penalty Amount Chosen: midpoint of range

4. Per-Day Assessment: $17,500

Part II - Penalty Adjustments

	Percentage Change*	Dollar Amount
1. Good faith efforts to comply/lack of good faith:	N/A	N/A
2. Degree of willfulness and/or negligence:	25%	$4,375
3. History of noncompliance:	N/A	N/A
4. Other unique factors:	N/A	N/A

5. Justification for Adjustments:

* Percentage adjustments are applied to the dollar amount calculated on line 4, Part I.

PENALTY COMPUTATION WORKSHEET (cont.)

6. Adjusted Per-day Penalty (Line 4, Part I + Lines 1-4, Part II):	$21,875
7. Number of Days of Violation:	N/A
8. Multi-day Penalty (Number of days x Line 6, Part II):	N/A
9. Economic Benefit of Noncompliance:	N/A
Justification:	
10. Total (Lines 8 + 9, Part II):	$21,875
11. Ability to Pay Adjustment:	
Justification for Adjustment:	N/A
12. Total Penalty Amount (must not exceed $25,000 per day of violation):	$21,875

(3)(A) Violation: A 1984 inspection of Company C's land disposal facility revealed that Company C had failed to implement a ground-water monitoring system by November 1981 as required under 40 CFR §265.90. The facility had taken no steps to implement a system: it failed to install monitoring wells (§265.91), and to obtain and analyze samples (§265.92); no outline of a ground-water quality assessment program had been prepared (§265.93); and no records were kept nor reports submitted to the Agency (§265.94). All of the violations arise from the same set of circumstances. Because Company C did not install wells, no sampling and analysis could occur. Without sampling and analysis, Company C did not have information with which to prepare a quality assessment program outline, keep records, or submit reports to the Agency. Therefore, the violations are not independent and substantially distinguishable in this situation. [See: Assessing Multiple Penalties]. A single penalty assessment is appropriate, with each section of the regulations that was violated cited in the complaint.

(B) Seriousness: Potential for Harm. Major - the violation could pose a substantial likelihood of exposure and could have a substantial adverse effect on the purposes for implementing the RCRA program. Extent of Deviation. Major - none of the requirements were implemented as intended.

(C) Gravity-based Penalty: Major potential for harm and major extent of deviation yield the cell with the penalty range of $20,000 to $25,000. The mid-point is $22,500.

(D) Economic Benefit of Noncompliance: Ground-water monitoring has been identified as an area for which an economic benefit component may be significant. The following estimates of the costs of complying with the ground-water monitoring requirements are taken from a January 1982 report prepared for EPA by Geraghty & Miller, Inc., entitled, Development of Ground-Water Monitoring Requirements and Costs for Current RCRA Regulatory Requirements, Contract No. 68-01-5838:

First Year Costs

Cost of ground-water quality assessment plan outline and ground-water sampling and analysis plan (COP)	$2,000
Cost of wells (COW), 1 upgradient and 3 downgradient	$9,000
Cost of sampling (COS)	$1,640

Cost of analysis (COA)	$11,360
Cost of report (COR), report for determining system needs, not report required under §265.94	$3,200
TOTAL	$27,200

Second Year Costs

Cost of sampling and cost of analysis (COS, COA), assuming no contamination found	$1,900

Assumptions: geology is unconsolidated material; hollow-stem auger drilling; PVC construction material; ground-water sampling by hand bailing; wells dug 50 ft. deep; estimated costs remained constant over time.

COP, COW, COR, and first year COS and COA are delayed costs. Company C eventually will make these expenditures in order to achieve compliance. Second year and subsequent COS and COA are avoided costs. Company C has permanently avoided incurring these costs.

Calculation of Economic Benefit Component

For each year of noncompliance (1981-1984), the economic benefit component should be calculated using the formula set out in Section VII:

Economic Benefit = Avoided Costs (1-T) + (Delayed Costs x Interest Rate)

1981: By November 1981, Company C was required to implement its ground-water monitoring system by installing wells, obtaining and analyzing samples at least quarterly, and preparing a quality assessment program outline.

Delayed costs = $27,200
Avoided costs = $0
IRS interest rate = 12%
Assume T = .46

Economic Benefit = $0 + ($27,200 x 12%)
= $3,264

1982: Company C still had not implemented its ground-water monitoring system. In addition, it had not obtained and analyzed samples at least annually or semi-annually, depending on the indicator parameter.

Delayed costs = $27,200
Avoided costs = $1,900
IRS interest rate = 20%
Assume T = .46

Economic Benefit = $1,900 (1-.46) + ($27,200 x 20%)
= $6,466

1983: Company C still had not implemented its ground-water monitoring system. In addition, it had not obtained and analyzed samples at least annually or semi-annually, depending on the indicator parameter.

Delayed costs = $27,200
Avoided costs = $1,900
IRS interest rate = 13.5% (the average of 16% and 11%)
Assume T = .46

Economic Benefit = $1,900 (1-.46) + ($27,200 x 13.5%)
= $4,698

Total Economic Benefit = $3,264 + $6,466 + $4,698
= $14,428

Penalty proposed in complaint = gravity-based penalty + economic benefit component
= $22,500 + $14,428
= $36,928

Because noncompliance continued over a three year period, the proposed penalty does not exceed $25,000 per day of violation.

(E) Settlement Adjustment: Company C did not request a settlement conference but did comply with the Compliance Order and paid the proposed penalty.

(4)(A) Violation: Pursuant to §3007(a) of RCRA, EPA sent a letter to Company D requesting that it furnish information relating to hazardous waste. Specifically, five separate records were requested. The letter required a response to EPA within 14 calendar days of Company D's receipt of the letter. One month after Company D received EPA's information request, it submitted three of the five documents requested. EPA sent a second letter requesting the two remaining documents. Company D failed to respond to the request.

(B) Seriousness: Potential for Harm. Moderate - Based on the nature of the information requested, EPA determined that Company D's failure to submit information relating to hazardous waste to EPA as requested may have a significant adverse effect on the purposes and procedures for implementing the RCRA program. Extent of Deviation. Moderate - Company D did submit some of the information requested. It significantly deviated from the requirement, but part of the requirement was implemented as intended.

(C) Gravity-based Penalty: Moderate - potential for harm and moderate extent of deviation yield the penalty range of $5,000 to $7,999. The midpoint is $6,500.

(D) Pre-Assessment Adjustments - On two previous occasions at different facilities, Company D failed to respond completely to §3007 requests for different information. In those cases, EPA issued administrative complaints with proposed penalties of $6,500 and $8,125 respectively. Both cases resulted in Consent Agreements and Final Orders which were entered into before EPA requested the information in the present case. The penalty is adjusted upwards 50% for history of noncompliance. $6,500 + $3,250 = $9,750. Compliance/enforcement personnel determined that the penalties assessed in the previous cases had failed to deter Company D from repeated noncompliance with RCRA. For this reason, a multi-day penalty of $9,750 per day from the date the information was due to EPA was assessed.

(E) Settlement Adjustment: Company D failed to convince EPA that any penalty mitigation was justified. Settlement negotiations broke down and the case went to an administrative hearing.

(5)(A) Violation: Company E's Part B Permit Application was called in by EPA in 1983. Company E, a land disposal facility, failed to submit its Part B by the date specified when the application was called-in. EPA issued a Notice of Deficiency requiring submission of a complete Part B within 30 days. EPA also issued a warning letter stating that failure to submit a complete Part B application is a violation of 40 CFR §270.10(a) which may result in the assessment of civil penalties and the initiation of procedures to terminate the facility's interim status. Company E sent EPA a one-page response several weeks after the date stipulated in the Notice of Deficiency. The response was seriously incomplete. Thus, Company E failed to submit a complete Part B in violation of 40 CFR §270.10(a).

(B) Seriousness: Potential for Harm. Moderate - inspections of Company E's facility have revealed a generally well-managed operation. However, failure to carry out the applicable requirements of 40 CFR §270.14-270.29 could pose a significant likelihood of exposure in this situation. The violation could have a significant adverse effect on the procedures for implementing the RCRA program. Extent of Deviation. Major - Part B application was seriously incomplete.

(C) Gravity-based Penalty: Moderate potential for harm and major extent of deviation lead one to the cell with the range of $8,000 to $10,999. The mid-point is $9,500.

(D) Economic Benefit of Noncompliance: Failure to submit or submittal of an incomplete Part B application has been identified as an area for which an economic benefit component may be significant. In a document prepared by EPA's Office of Solid Waste requesting clearance from the Office of Management and Budget to call in Part B applications, it was estimated that the cost of preparing a Part B for a land disposal facility was approximately $150,000. The document, entitled, FY 1984 Burden Hours for RCRA Land Disposal Permitting Standards is dated November 18, 1983.

The economic benefit component should be calculated using the formula set out in Section VII:

Economic Benefit = Avoided Costs (1-T) + (Delayed Costs x Interest Rate)

Failure to submit a complete Part B is a delayed cost. Company E eventually will spend the money in order to achieve compliance. No avoided costs are associated with this violation. The economic benefit should be calculated for a one year period. The IRS interest rate for 1983 is 13.5% (the average of 16% and 11%).

Economic Benefit = $0 + ($150,000 x 13.5%)
= $20,250

Penalty proposed in complaint = gravity-based penalty + economic benefit component
= $9,500 + $20,250
= $29,750

Because noncompliance continued over a period of several months, the proposed penalty does not exceed $25,000 per day of violation.

(E) Settlement Adjustment: At the settlement conference, Company E raised and documented that it was in a poor financial state and would be unable to pay the full penalty. Company E also told the Agency that it intended to cease handling hazardous waste. Because of the company's inability to pay, and because of the Agency's desire that Company E put what money it has into proper closure and post-closure care at its facility, the penalty was reduced to $5,000. A Compliance Order was issued putting Company E on a schedule for closing its facility in accordance with its approved closure plan.

PENALTY COMPUTATION WORKSHEET

Company Name: Grady McCauley Creative Graphics, Inc.

Regulation Violated 270.1 - managing H-Ww w/o a permit or interim status

Asessments for each violation should be determined on separate worksheets and totalled.

(If more space is needed, attach separate sheet.)

Part I - Seriousness of Violation Penalty

1. Potential for Harm: Moderate - Solvents in core samples + one well sample

2. Extent of Deviation: Major - no knowledge of RCRA

3. Matrix Cell Range: _____

Penalty Amount Chosen: $ 9,500

Justification for Penalty Amount Chosen: midpoint, see comments on p. 2.

4. Per-Day Assessment: _____

Part II - Penalty Adjustments

	Percentage Change*	Dollar Amount
1. Good faith efforts to comply/lack of good faith:	_____	_____
2. Degree of willfulness and/or negligence:	_____	_____
3. History of noncompliance:	/	_____
4. Other unique factors:	_____	_____

5. Justification for Adjustments:

* Percentage adjustments are applied to the dollar amount calculated on line 4, Part I.

PENALTY COMPUTATION WORKSHEET (cont.)

6. Adjusted Per-day Penalty (Line 4, Part I + Lines 1-4, Part II):	_____
7. Number of Days of Violation:	_____
8. Multi-day Penalty (Number of days x Line 6, Part II):	_____
9. Economic Benefit of Noncompliance:	_____
Justification:	
10. Total (Lines 8 + 9, Part II):	_____
11. Ability to Pay Adjustment:	
Justification for Adjustment:	_____
12. Total Penalty Amount (must not exceed $25,000 per day of violation):	_____

Facility changed processes in July 1984 and no longer generates a H.W. For the purpose of this Complaint and pursuant to p. 12 of the RCRA penalty policy; the resulting O.S.C. rego violations are not considered to be independent of the fact that the facility had no knowledge of RCRA and, therefore, did not have interim status to store H. W.

WEM
6/17/85

Complainant Exhibit 6

CHECKLIST

1. Does your facility handle hazardous wastes (as defined by RCRA)?

Company president does not believe so. Uses ~100 gal of methyl ethyl ketone / month. See attached letter.

2. If yes, what types of hazardous waste handling do you do; i.e. treatment, storage, or disposal?

3. If yes to above, did you notify U.S. EPA of your waste handling activities (notification process)?

4. If yes, have you received your EPA Identification Number? What is your I.D. number?

5. If yes to above, have you submitted a Part A RCRA Permit Application to U.S. EPA?

this map in my notes from the YAC sweep. I thought you might find it helpful if you're still working on Dice decal.

Ellen

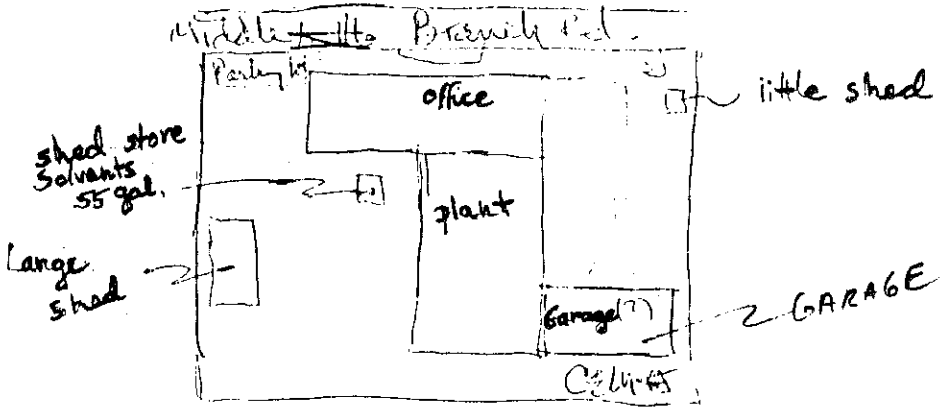
DICE

RAGS ARE USED TO CLEAN MACHINERY.

1st ~ 100 gal

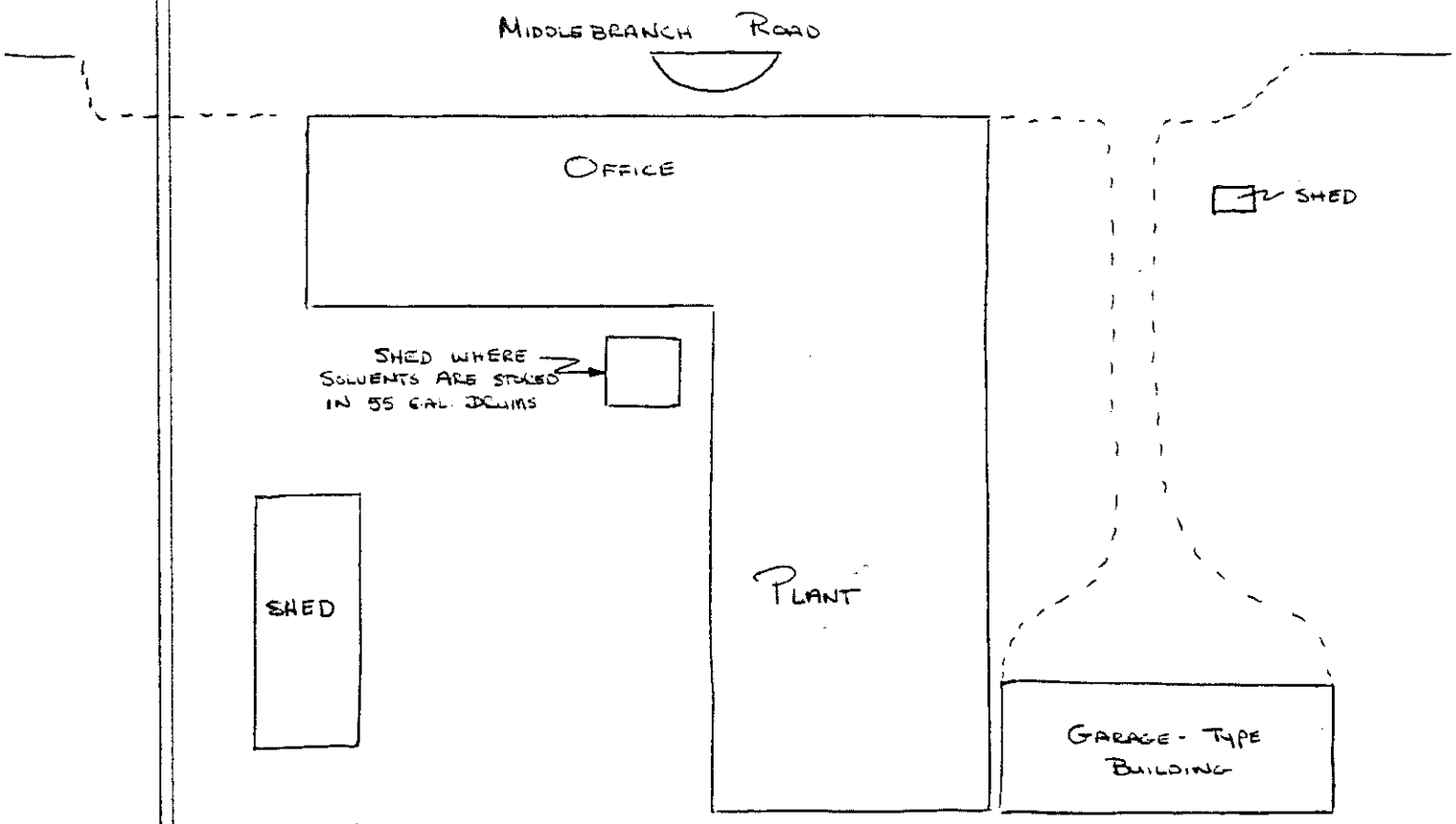
Solvent/month

(MEK)



SITE SKETCH FOR DICE DECAL CORP.
P.O. BOX 165
7390 MIDDLE BRANCH RD.
MIDDLE BRANCH, OHIO 44652

NOT TO SCALE



NOV 20, 1980

OEM

OH-235-05

ecology and environment, inc.
223 WEST JACKSON BLVD., CHICAGO, ILLINOIS 60606, TEL. 312-663-9415
International Specialists in the Environmental Sciences

DATE: October 30, 1981

TO: Rene Van Someren

FROM: Ron St. John

RE: Ohio / TDD# F5-8110-1
Middlebranch / Dice Decal

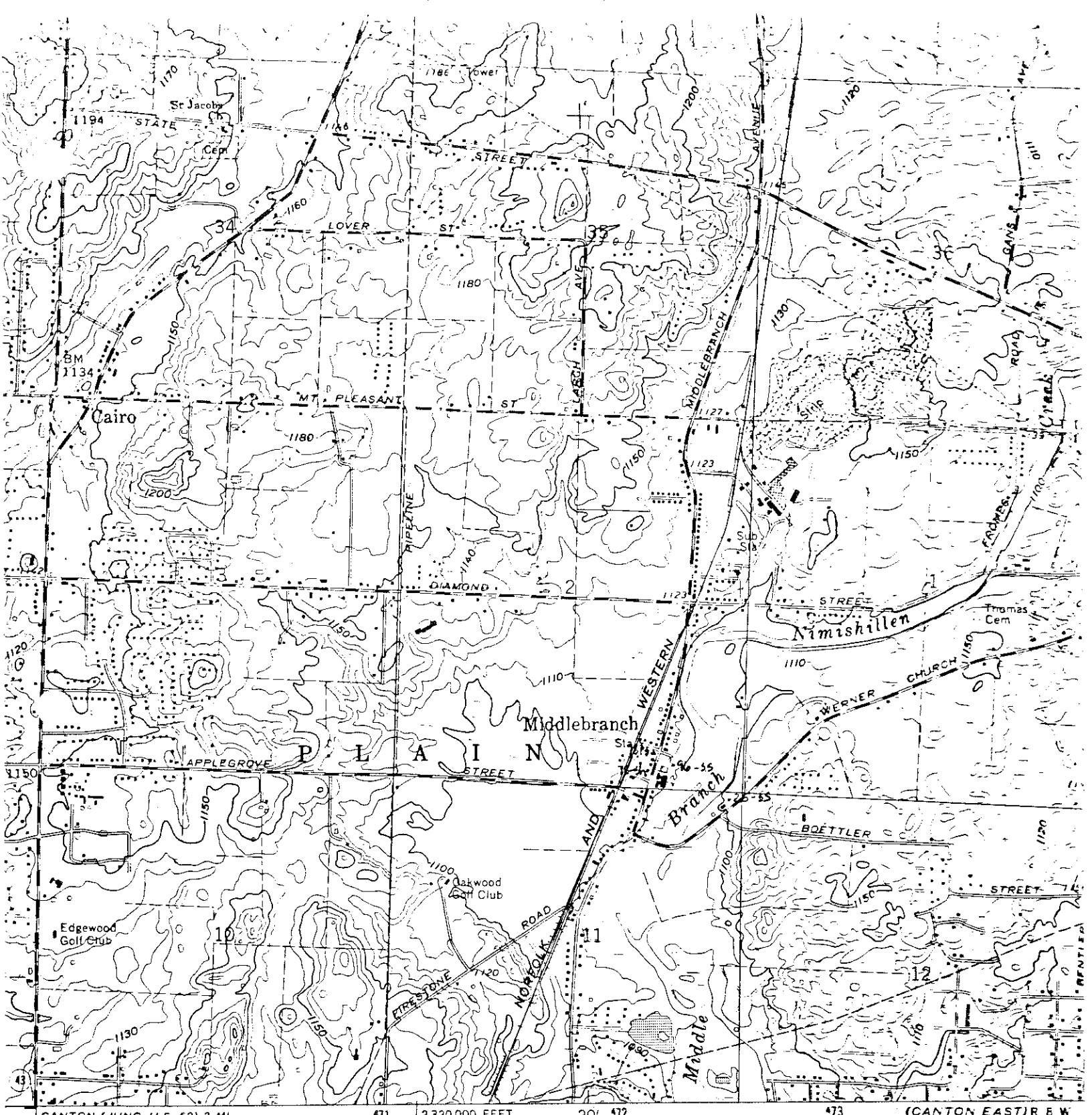
Problem

Dice Decal Corporation of Middlebranch, Ohio (Figure 1) produces decals which are used for fleet markings on trucks. Paint and solvent (methyl ethyl ketone) wash rinses from the production process are stored in a dry well on site and removed about twice a year, 2000 gallons at a time.

Presently, there is concern that local residents' wells are in danger of being contaminated by this storage well.

Geology

The northern three quarters of Stark County lies in an area covered by the Illinoian and Wisconsinan glaciations of the Pleistocene Epoch. The generalized glacial deposits map of Ohio (Figure 2) indicates that Middlebranch is on a large north-south trending kame and esker deposit. These unconsolidated ice contact deposits tend to be stratified, somewhat laterally continuous, and lithologically similar to alluvial deposits. The boring logs (Appendix I) indicate that the glacial drift consists of abundant clays surficially with some thick units of sand and gravel at moderate depths (25 to 50 feet). The glacial drift is underlain by a basal, discontinuous, hardpan clay capping the bedrock.



published by the Geological Survey

D&GS

otographs by photogrammetric methods
1952. Field check 1960

27 Nr American datum
Ohic rdinate system, north zone
nsverse Mercator grid ticks,

cate selected fence and field lines where
photographs. This information is unchecked

s Lands North of Old Seven Ranges
Land lines within Connecticut
ed by private subdivision

MN
GN
5°
89 MILS
0°12'
4 MILS

UTM GRID AND 1978 MAGNETIC NORTH
DECLINATION AT CENTER OF SHEET

SCALE 1:24 000

1000 0 1000 2000 3000 4000

CONTOUR INTERVAL 10 FEET
NATIONAL GEODETIC VERTICAL DATUM O

THIS MAP COMPLIES WITH NATIONAL MAP ACCUR
FOR SALE BY U. S. GEOLOGICAL SURVEY, RESTON
A FOLDER DESCRIBING TOPOGRAPHIC MAPS AND SYMBOLS IS

Figure 1.

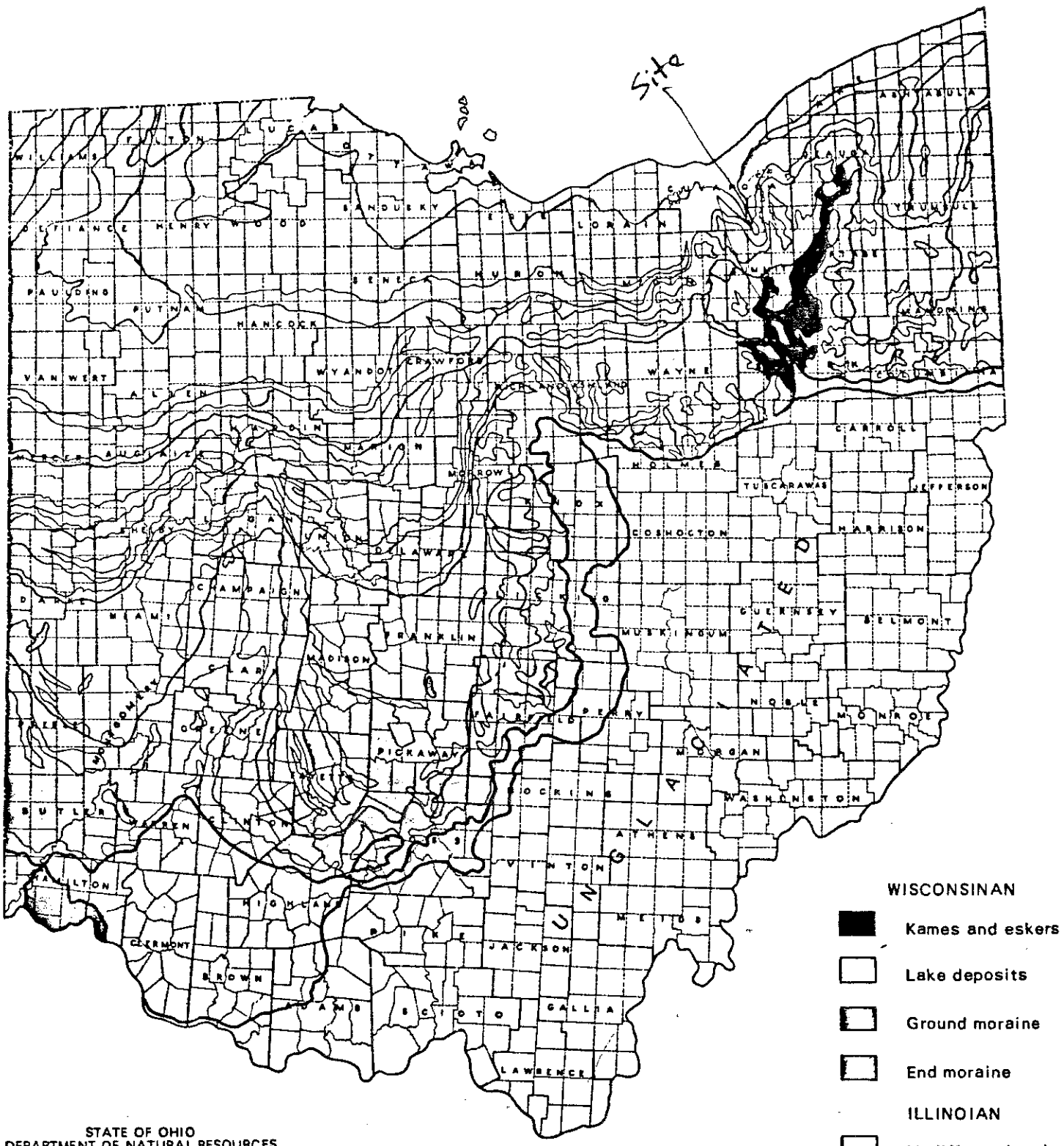


Figure 2. GLACIAL DEPOSITS OF OHIO

TDD# F5-8110-1
Dice Decal

Bedrock in the site vicinity is composed of interbedded Pennsylvanian (Pottsville group) shale, limestone and sandstone which varies in depth from approximately 45 to 90 feet. Since topographic relief in the area is minimal, it must be assumed that the bedrock surface relief accounts for this variation.

Hydrogeology

Middlebranch, Ohio lies in an area of groundwater discharge to the Nimishillen Creek drainage net of the Sandy Creek Basin (Figure 3). Areas downstream on Middle Branch Creek and most parts of the East and West Branch of Nimishillen Creek are areas of groundwater recharge. In these areas of groundwater recharge, large yields (1000 gpm) in wells are common in both bedrock and unconsolidated deposits due to creek infiltration. Therefore, it is probably safe to assume that groundwater flows east of southeast toward the creek in the unconsolidated deposits near the site.

The unconsolidated glacial drift and bedrock in the Middlebranch vicinity can be expected to yield up to twenty-five gpm to wells. These yields would amply support domestic needs and therefore are valuable water resources.

The bedrock aquifer with its discontinuous cap of hardpan clay is less susceptible to surface pollution in this area. Where this clay unit exists, it is likely to provide both a significant barrier to vertical groundwater movement as well as pronounced attenuation of pollutants. The well yields in the bedrock are limited to five to twenty-five gpm.

TDD# F5-8110-1
Dice Decal

Conclusions

1) The original site inspection report (Appendix II) indicated that about 100 gallons of solvents were used per month in the production process and that 2,000 gallons of wash water was pumped from the storage well biannually. There is no estimate of the amount of waste pumped into the well. Without this information and well characteristics, such as depth, diameter, water level, and casing type, it is difficult to make an assessment of the problem.
2) It does seem reasonable to assume, however, that the soils in which the well lies are fairly impermeable. Two reasons for this assumption are that boring logs indicate a clayey upper unit and that the well needs to be pumped out every year. The latter reason indicating that with increased head (from filling) the increased flow rate out of the well is not substantial.
3) The fact that the storage well is an abandon dry water well indicates "tight soils" and suggests abundant clays. The significance of the clays inplace is that they aid in the attenuation of heavy metals via ion exchanges. Organic contaminant movement would probably be inhibited as well.
4) At present, 4000 gallons of waste water rinses are removed from the storage well annually. If the amount introduced into the well is substantially greater than this amount and the concentration of contaminants in the water is significant, then there is indeed a probability that groundwater in the area is being contaminated.

Recommendation

A supplemental site inspection should take place to perform: 1) a determination of the well characteristics (depth, diameter, casing, water level); 2) sampling of the well water; and 3) a determination of the amount of waste introduced to the well each year.

RSJ/df

Appendix I

WELL LOG AND DRILLING REPORT

ORIGINAL

State of Ohio
DEPARTMENT OF NATURAL RESOURCES
Division of Water
1500 Dublin Road
Columbus, Ohio

No. 195516

County Stark Township Plain Section of Township 11

Owner Diamond Portland Cement Co Address Middlebranch O.

Location of property Cement Plant in Middlebranch

CONSTRUCTION DETAILS

Casing diameter 12" Length of casing 64 ft

Type of screen — Length of screen —

Type of pump

Capacity of pump

Depth of pump setting

Date of completion

BAILING OR PUMPING TEST

Pumping rate 175 G.P.M. Duration of test 5 hrs.

Drawdown 155 ft. Date Mar. 1, 1957

Developed capacity 175 G.P.M.

Static level—depth to water 45 ft.

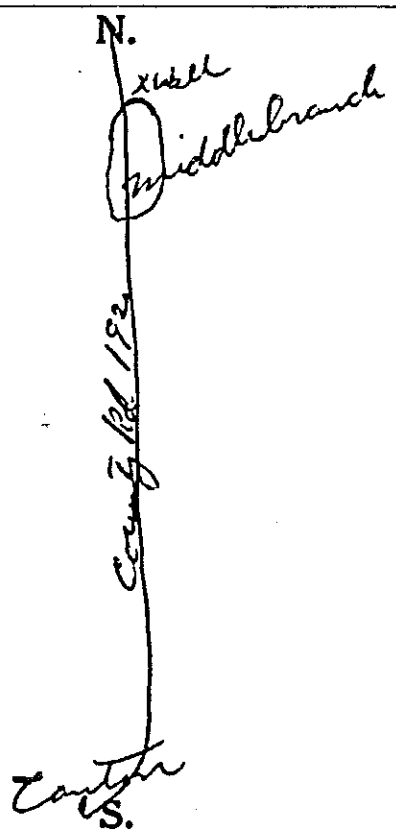
Pump installed by

WELL LOG

Formations Sandstone, shale, limestone, gravel and clay	From	To
fill	0 Feet	20 Ft.
shale	20	75 "
fire clay	75	78 "
shale	78	126 "
sand rock	126	131 "
sandy shale	131	142 "
sand rock	142	174 "
shale	174	230 "
sand rock	230	275 "
shale	275	331 "
sand rock	331	368 "
shale	368	386 "
sand rock	386	402 "
shale	402	425 "

SKETCH SHOWING LOCATION

Locate in reference to numbered State Highways, St. Intersections, County roads, etc.



See reverse side for instructions

Drilling Firm M. J. Engel Drilling Co. Date Mar. 1, 1957

Address R.D. 2 Louisville O. Signed M. J. Engel

20.

F'L LOG AND DRILLING REI RT

ORIGINAL

19

LOCATED

State of Ohio
DEPARTMENT OF NATURAL RESOURCES
Division of Water
Columbus, Ohio

No 161529

County Stark Township Plain Section of Township or Lot Number 1

Owner Williard Wellon Address Middlebranch, Ohio

Location of property East of Diamond Portland Cement Co.

CONSTRUCTION DETAILS

Casing diameter 4-inches Length of casing 42 feet
Type of screen none Length of screen
Type of pump deep well
Capacity of pump 350 gph
Depth of pump setting 60 feet

PUMPING TEST

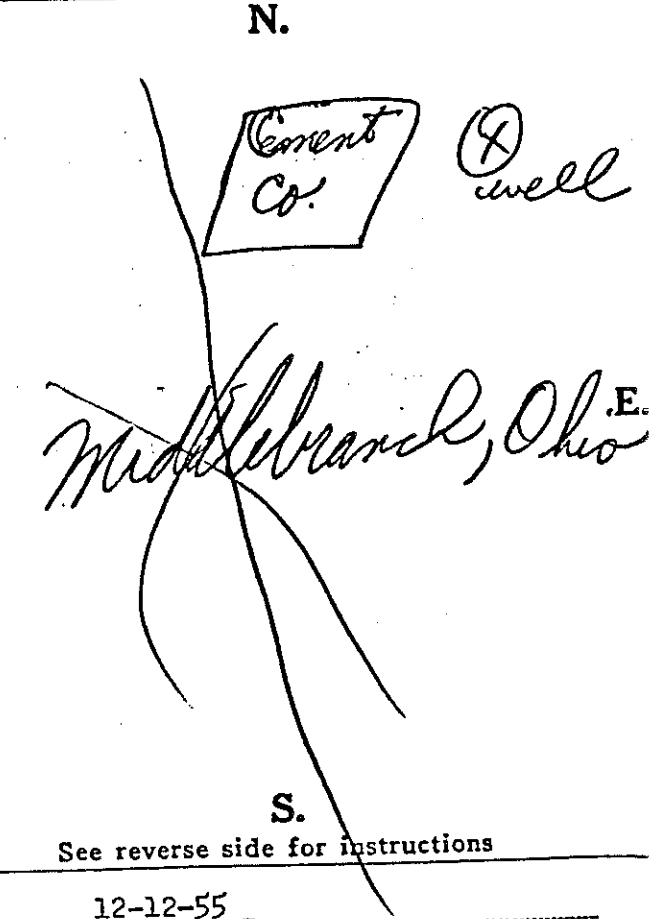
Pumping rate 6 G.P.M. Duration of test 1 hrs.
Drawdown 8 ft. Date 12-12-55
Developed capacity 360 gph plus
Static level—depth to water 37 ft.
Pump installed by

WELL LOG

Formations Sandstone, shale, limestone, gravel and clay	From	To
Overburden	0 Feet	26 Ft.
Clay	26	38
Fireclay	38	49
Shale	49	62
Sandstone	62	72
Shale	72	75
Water at 58 feet.		

SKETCH SHOWING LOCATION

Locate in reference to numbered State Highways, St. Intersections, County roads, etc.



See reverse side for instructions

Drilling Firm BROGAN DRILLING COMPANY
Address 2315 Daleford Ave. N.E. Canton, Ohio

Date 12-12-55
Signed Paul D. Brogan

19

WELL LOG AND DRILLING REPORT

State of Ohio
DEPARTMENT OF NATURAL RESOURCES
Division of Water
Columbus, Ohio

ORIGINAL

LOCATED

No 98320

County Stark Township Plain Section of Township or Lot Number

Owner Weldon Doney Address Prospect Middlebranch, Ohio

Location of property Prospect Middlebranch, Ohio

CONSTRUCTION DETAILS

Casing diameter 4" Length of casing 344

Type of screen Length of screen

Type of pump

Capacity of pump

Depth of pump setting

PUMPING TEST

Pumping rate 7 G.P.M. Duration of test 1 hrs.

Drawdown 12 ft. Date Sept. 17, 1952

Developed capacity 7 G.P.M.

Static level—depth to water 28' ft.

Pump installed by

WELL LOG

Formations Sandstone, shale, limestone, gravel and clay	From	To
f 1-gravel-clay	0 Feet	12 Ft.
gravel sand-little clay	12	18
Limestone	13	23
Black rotten shale	23	25
Blue shale	25	52
Dark gray shale	52	57
Sand rock	57	60

SKETCH SHOWING LOCATION

Locate in reference to numbered State Highways, St. Intersections, County roads, etc.

N.

W. E.

S.

See reverse side for instructions

Drilling Firm R.G. Stark

Address P.O. #1 Louisville, Ohio

Date Sept. 22, 1952

Signed R.G. Stark

17

WELL LOG AND DRILLING REPORT

1

State of Ohio
DEPARTMENT OF NATURAL RESOURCES
Division of Water
Columbus, Ohio

No 107099

County Ash Township Plain Section of Township or Lot Number 21

Owner Diamond Portland Cement Co Address Middlebranch O

Location of property Main office in Middlebranch

CONSTRUCTION DETAILS

Casing diameter 8" Length of casing 191 ft

Type of screen Length of screen

Type of pump

Capacity of pump

Depth of pump setting

PUMPING TEST

Pumping rate 100 G.P.M. Duration of test 4 hrs.

Drawdown 17 ft. Date Jan 26 1954

Developed capacity 100 G.P.M.

Static level—depth to water 110 ft.

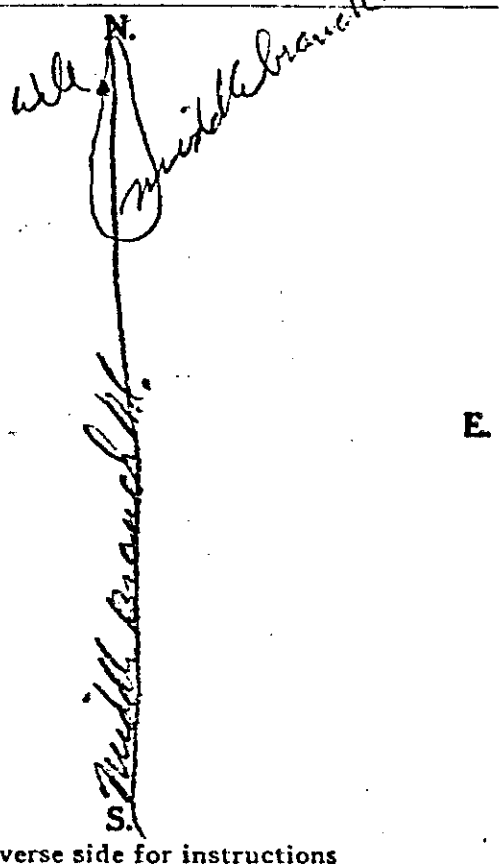
Pump installed by

WELL LOG

Formations Sandstone, shale, limestone, gravel and clay	From	To
Clay, sand & gravel	0 Feet	60 Ft.
shale	60	100
sand rock	100	178
shale	178	197
sand rock	197	218
shale	218	231
sand rock	231	254
shale	254	284
sand rock	284	316
shale	316	329
sand rock	329	337

SKETCH SHOWING LOCATION

Locate in reference to numbered State Highways, St. Intersections, County roads, etc.



See reverse side for instructions

Drilling Firm W. J. Engel Drilling Co Date Jan 26 1954

Address RD 5 & 6 Navarre O Signed W. J. Engel

WELL LOG AND DRILLING REPORT

PLEASE USE PENCIL OR TYPEWRITER. DO NOT USE INK.

State of Ohio
DEPARTMENT OF NATURAL RESOURCES
Division of Water
1562 W. First Avenue
Columbus, Ohio

ORIGIN. ORIGINAL

No. 225238

County [illegible] Township [illegible] Section of Township 2

Owner [illegible] Address [illegible]

Location of property [illegible] Canton, Ohio

CONSTRUCTION DETAILS

Casing diameter [illegible] Length of casing [illegible]

Type of screen [illegible] Length of screen [illegible]

Type of pump deep well

Capacity of pump [illegible]

Depth of pump setting [illegible]

Date of completion Oct. 11, 1961

BAILING OR PUMPING TEST

Pumping rate 10 G.P.M. Duration of test 1 hrs.

Drawdown 10 ft. Date 10-11-61

Developed capacity 1080 gph

Static level—depth to water 36 ft.

Pump installed by [illegible]

WELL LOG

Formations Sandstone, shale, limestone, gravel and clay	From	To
Soil - clay	0 Feet	20 Ft.
Sand & gravel	20 ft.	40½ "
Clay & shale	40½ ft.	70 "
Sand, coal & gravel mix	70 ft.	78 "
Shale	78 ft.	87 ft.

SKETCH SHOWING LOCATION

Locate in reference to numbered State Highways, St. Intersections, County roads, etc.

N.

W. E.

S.

See reverse side for instructions

Drilling Firm Brogan Drilling Co.

Address 7303 Columbus St. P.E. Louisville, Ohio

Date Oct. 14, 1961

Signed Paul A. Brogan

by Mrs. Brogan

ORIGINAL

V L LOG AND DRILLING REI RT 296

State of Ohio
DEPARTMENT OF NATURAL RESOURCES
Division of Water
1500 Dublin Road
Columbus, Ohio

No. 215925

County Stark Township Perry Section of Township 2

Owner Maurice Short Address Box 104 Middlebranch, Ohio

Location of property 8th house on left on E. Maple in Middlebranch

CONSTRUCTION DETAILS

Casing diameter 4" Length of casing 165' 11"
Type of screen Length of screen
Type of pump
Capacity of pump
Depth of pump setting
Date of completion

BAILING ~~OR PUMPING~~ TEST

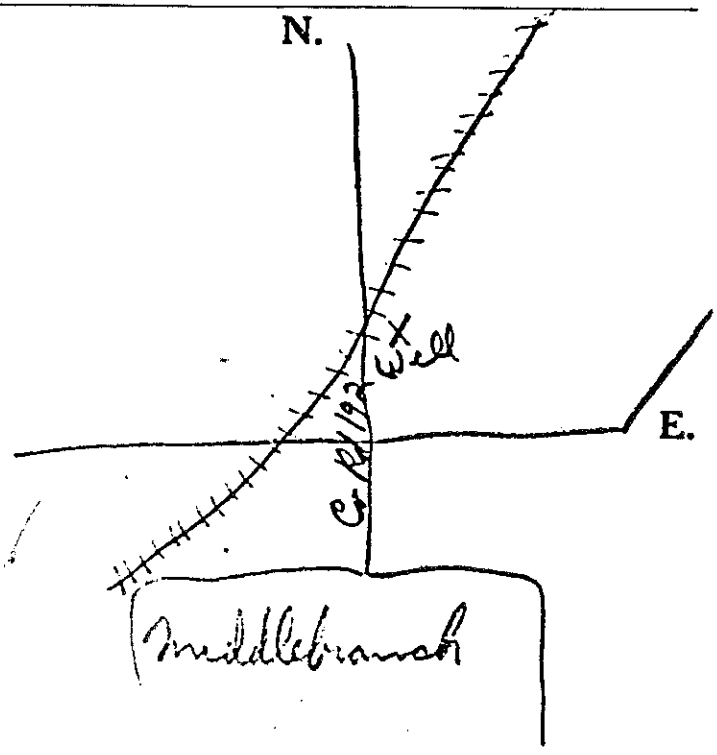
Pumping rate G.P.M. Duration of test hrs.
Drawdown 24 ft. Date 3-4-58
Developed capacity 15 gpm
Static level—depth to water 36 ft.
Pump installed by

WELL LOG

Formations Sandstone, shale, limestone, gravel and clay	From	To
Washed	0 Feet	27 Ft.
Clay	29'	31'
Dray Sandy	31'	41'
Dray Plastic	41'	52' 6"
Limestone	52' 6"	57' 6"
Dray Shale	57' 6"	69' 6"
Limestone	69' 6"	71' 6"
Dray Shale	71' 6"	78'
Sandrock	78'	175'
Dark Shale	175'	179'
Coal	179'	180'
Clay	180'	182'
Dray Sandy	182'	205'
Light Dray Sandrock	205'	228'
2 ½ at 219'		

SKETCH SHOWING LOCATION

Locate in reference to numbered State Highways, St. Intersections, County roads, etc.



See reverse side for instructions

Drilling Firm Everett Walk & Co. Inc. Date 3-22-58
Address Strasburg, Ohio Signed R. D. Shively

Appendix II

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION V

DATE: 3/20/86

SUBJECT: November 20, 1980 Inspection of Dice Decal Corporation, Middlebranch, Ohio

FROM: Rich Boice, CES R E Boice

TO: Paul Dimock, RES

Attached is the report for the above referenced inspection prepared by Ecology and Environment. In addition an internal Ecology and Environment memo dated October 30, 1981 is enclosed that provides a preliminary assessment of the potential for contaminating nearby residential wells.

The November 20, 1980 inspection of Dice Decal was part of what the U.S. EPA called the Akron, Canton, Youngstown Sweep. This sweep was well publicized and was meant to locate as many hazardous waste disposal problems as possible. We were especially interested in locating conditions that needed immediate action as a result of illegal dumping or storage of hazardous wastes.

Ecology and Environment, Inc. was responsible for conducting the inspections. Sites to be inspected were identified from U.S. EPA and State records and from complaints called in during the sweep. The call-in effort was organized by U.S. EPA. My role was to oversee and help evaluate Ecology and Environment's performance. To do this I participated in a number of the inspections including the inspection of Dice Decal.

During the sweep, Ecology and Environment, Inc. sent out a number of two-person teams to conduct the inspections. In addition to myself, sometimes employees from State and local pollution control agencies participated in the inspections. Each team conducted from two to five inspections per day. The inspections were unannounced and consisted of discussing conditions and operations with any company officials and property owners available at the site and a walk through or walk around inspection of the site. The reports generated from these inspections were based strictly on these walk through inspections, and the verbal information obtained. Obviously the evaluations from these inspections were preliminary and detailed evaluations of the subsurface hydrogeology and of contaminant attenuation were beyond the scope of the assignment.

OH-235-05

ecology and environment, inc.

223 WEST JACKSON BLVD., CHICAGO, ILLINOIS 60606, TEL. 312-663-9415

International Specialists in the Environmental Sciences

DATE: November 25, 1980

TO: File

FROM: Ellen J. Jurczak
Claude E. Mays III
Jerome D. Oskvarek

SUBJECT: Ohio/TDD# F5-8010-13
Middlebranch/Dice Decal Corporation

Ellen Jurczak and Claude Mays of E&E and Richard Boice of the USEPA investigated Dice Decal Corporation of 7390 Middlebranch Road in Middlebranch, Ohio on November 20, 1980 in response to an anonymous hotline call (attached). The company president, Bob Hattersley, was interviewed and answered all applicable questions on the site inspection form.

Dice Decal Corporation produces decals which are mostly used for fleet markings on trucks. Various paints and about 100 gallons of solvents (methyl ethyl ketone) are used per month in the production process. Resulting solids (e.g. rags used to clean the machinery, empty paint cans, etc.) are disposed of as municipal waste which is collected twice a week by Lippel Rubbish Removal. Wash water containing methyl ethyl ketone and soap (which was reported as being biodegradable) goes to a dry well which is pumped out twice a year by Humbert Sanitation Services. About 2000 gallons are pumped out each time. Although nearby houses get their drinking water from groundwater wells, the wells are deep enough (190-250 feet) and the concentration of MEK in the waste water so low that groundwater contamination is unlikely.

Mr. Hattersley has been contacted by the USEPA about the RCRA notification process and feels his site does not produce enough hazardous waste to qualify as a generator (see attached).

A follow-up interim status standard inspection is recommended to investigate the use of the dry well for temporary storage.

EJJ,CEM,JDO/df

Attachments

EPA

POTENTIAL HAZARDOUS WASTE SITE
E INSPECTION REPORT

REGION: 17 | SITE NUMBER (To be assigned by HQ)

GENERAL INSTRUCTIONS: Complete Sections I and III through XV of this form as completely as possible. Then use the information on this form to develop a Tentative Disposition (Section II). File this form in its entirety in the regional Hazardous Waste Log File. Be sure to include all appropriate Supplemental Reports in the file. Submit a copy of the forms to: U.S. Environmental Protection Agency; Site Tracking System; Hazardous Waste Enforcement Task Force (EN-335), 401 M St., SW; Washington, DC 20460.

I. SITE IDENTIFICATION

A. SITE NAME	B. STREET (or other identifier)		
DICE DECAL CORP	7390 MIDDLEBRANCH N.E.		
C. CITY	**D. STATE**	**E. ZIP CODE**	**F. COUNTY NAME**
MIDDLEBRANCH	OHIO	44652	STARK

G. SITE OPERATOR INFORMATION

1. NAME	2. TELEPHONE NUMBER		
DICE DECAL CORP.	(216) 494-9444		
3. STREET	**4. CITY**	**5. STATE**	**6. ZIP CODE**
P.O. BOX 165	MIDDLEBRANCH	OHIO	44652

H. REALTY OWNER INFORMATION (if different from operator of site)

1. NAME	2. TELEPHONE NUMBER	
DICE DECAL CORP.	(216) 494-9444	
3. CITY	**4. STATE**	**5. ZIP CODE**
P.O. BOX 165	OHIO	44652

I. SITE DESCRIPTION

PRODUCE DECALS FOR FLEET MARKINGS ON TRUCKS

J. TYPE OF OWNERSHIP

☐ 1. FEDERAL ☐ 2. STATE ☐ 3. COUNTY ☐ 4. MUNICIPAL ☒ 5. PRIVATE

II. TENTATIVE DISPOSITION (complete this section last)

A. ESTIMATE DATE OF TENTATIVE DISPOSITION (mo., day, & yr.)	B. APPARENT SERIOUSNESS OF PROBLEM
	☐ 1. HIGH ☐ 2. MEDIUM ☒ 3. LOW ☐ 4. NONE

C. PREPARER INFORMATION

1. NAME	2. TELEPHONE NUMBER	3. DATE (mo., day, & yr.)
ELLEN J. JURCZAK	(312) 663-9415	

III. INSPECTION INFORMATION

A. PRINCIPAL INSPECTOR INFORMATION

1. NAME	2. TITLE	
ELLEN J. JURCZAK (E17)	ENVIRONMENTAL ENGINEER	
3. ORGANIZATION	**4. TELEPHONE NO. (area code & no.)**	
ECOLOGY & ENVIRONMENT, INC.	(312) 663-9415	

B. INSPECTION PARTICIPANTS

1. NAME	2. ORGANIZATION	3. TELEPHONE NO.
CLAUDE MAYS	E & E	(312) 663 9415
RICH BOICE	USEPA	(312) 353-5638

C. SITE REPRESENTATIVES INTERVIEWED (corporate officials, workers, residents)

1. NAME	2. TITLE & TELEPHONE NO.	3. ADDRESS
BOB HATTERSLEY	PRESIDENT (216) 494-9444	P.O. BOX 165 MIDDLEBRANCH, OHIO 44652

III. INSPECTION INFORMATION (continued)

D. GENERATOR INFORMATION (source of w... (Page 12-1)

1. NAME	2. TELEPHONE NO.	3. ADDRESS	4. WASTE TYPE GENERATED
DICE DECAL CORP.	(216) 494-9444	P.O. BOX 165 MIDDLEBRANCH, OHIO 44652	SOLVENTS (MEK)

E. TRANSPORTER/HAULER INFORMATION

1. NAME	2. TELEPHONE NO.	3. ADDRESS	4. WASTE TYPE TRANSPORTED
TIPPLE RUBBISH REMOVAL	(216) 494-4628	10231 Cleveland Ave. Union Town, Ohio 44685	~~SOLVENTS~~ RUBBISH, PAINT
HUMBERT SAN. SERV.	(216) 494-3000	P.O. BOX 2126 N. CANTON, OHIO 44720	SEPTIC TANK

F. IF WASTE IS PROCESSED ON SITE AND ALSO SHIPPED TO OTHER SITES, IDENTIFY OFF-SITE FACILITIES USED FOR DISPOSAL.

1. NAME	2. TELEPHONE NO.	3. ADDRESS

G. DATE OF INSPECTION (mo., day, & yr.)	H. TIME OF INSPECTION	I. ACCESS GAINED BY: (credentials must be shown in all cases)
11-20-80	1:30 pm	[X] 1. PERMISSION [ ] 2. WARRANT

J. WEATHER (describe)

CLEAR 40° LITTLE WIND

IV. SAMPLING INFORMATION

Mark 'X' for the types of samples taken and indicate where they have been sent e.g., regional lab, other EPA lab, contractor, etc. and estimate when the results will be available.

1. SAMPLE TYPE	2. SAMPLE TAKEN (mark 'X')	3. SAMPLE SENT TO:	4. DATE RESULTS AVAILABLE
a. GROUNDWATER		N/A	
b. SURFACE WATER			
c. WASTE			
d. AIR			
e. RUNOFF			
f. SPILL			
g. SOIL			
h. VEGETATION			
i. OTHER (specify)			

B. FIELD MEASUREMENTS TAKEN (e.g., radioactivity, explosivity, PH, etc.)

1. TYPE	2. LOCATION OF MEASUREMENTS	3. RESULTS
	N/A	

Continue On Page 3

Continued From Page 2

IV. SAMPLING INFORMATION (continued)

C. PHOTOS N/A

1. TYPE OF PHOTOS
☐ a. GROUND ☐ b. AERIAL

2. PHOTOS IN CUSTODY OF:

D. SITE MAPPED?
☐ YES. SPECIFY LOCATION OF MAPS: N/A

E. COORDINATES
1. LATITUDE (deg.-min.-sec.)

2. LONGITUDE (deg.-min.-sec.)

V. SITE INFORMATION

A. SITE STATUS
☑ 1. ACTIVE (Those industrial or municipal sites which are being used for waste treatment, storage, or disposal on a continuing basis, even if infrequently.)
☐ 2. INACTIVE (Those sites which no longer receive wastes.)
☐ 3. OTHER (specify): (Those sites that include such incidents like "midnight dumping" where no regular or continuing use of the site for waste disposal has occurred.)

B. IS GENERATOR ON SITE?
☐ 1. NO ☑ 2. YES (specify generator's four-digit SIC Code): ____

C. AREA OF SITE (in acres)
~ 1/2 acre.

D. ARE THERE BUILDINGS ON THE SITE?
☐ 1. NO ☑ 2. YES (specify): OFFICE, PLANT

VI. CHARACTERIZATION OF SITE ACTIVITY

Indicate the major site activity(ies) and details relating to each activity by marking 'X' in the appropriate boxes.

X'	A. TRANSPORTER	X'	B. STORER	X'	C. TREATER	X'	D. DISPOSER
	1. RAIL		1. PILE		1. FILTRATION		1. LANDFILL
	2. SHIP		2. SURFACE IMPOUNDMENT		2. INCINERATION		2. LANDFARM
	3. BARGE		3. DRUMS		3. VOLUME REDUCTION		3. OPEN DUMP
	4. TRUCK		4. TANK, ABOVE GROUND		4. RECYCLING/RECOVERY		4. SURFACE IMPOUNDMENT
	5. PIPELINE		5. TANK, BELOW GROUND		5. CHEM./PHYS./TREATMENT		5. MIDNIGHT DUMPING
	6. OTHER (specify):		6. OTHER (specify):		6. BIOLOGICAL TREATMENT		6. INCINERATION
					7. WASTE OIL REPROCESSING		7. UNDERGROUND INJECTION
					8. SOLVENT RECOVERY	X	8. OTHER (specify): wastes go into drain + this is dry well where the pump out twice a year (~ 2000 gal. each)
					9. OTHER (specify):		

E. SUPPLEMENTAL REPORTS: If the site falls within any of the categories listed below, Supplemental Reports must be completed. Indicate which Supplemental Reports you have filled out and attached to this for.. N/A

☐ 1. STORAGE ☐ 2. INCINERATION ☐ 3. LANDFILL ☐ 4. SURFACE IMPOUNDMENT ☐ 5. DEEP WELL
☐ 6. CHEM/BIO/PHYS TREATMENT ☐ 7. LANDFARM ☐ 8. OPEN DUMP ☐ 9. TRANSPORTER ☐ 10. RECYCLOR/RECLAIMER

VII. WASTE RELATED INFORMATION

A. WASTE TYPE
☑ 1. LIQUID ☐ 2. SOLID ☐ 3. SLUDGE ☐ 4. GAS

B. WASTE CHARACTERISTICS
☐ 1. CORROSIVE ☐ 2. IGNITABLE ☐ 3. RADIOACTIVE ☒ 4. HIGHLY VOLATILE (methyl ethyl ketone)
☐ 5. TOXIC ☐ 6. REACTIVE ☐ 7. INERT ☐ 8. FLAMMABLE

☐ 9. OTHER (specify):

C. WASTE CATEGORIES
1. Are records of wastes available? Specify items such as manifests, inventories, etc. below.
~~Any records in bills~~ Bills are kept in file. with authorized company

Continue On Reverse

VII. WASTE RELATED INFORMATION (continued)

2. Estimate the amount (specify unit of measure) of waste by category, mark 'X' to indicate which wastes are present.

a. SLUDGE	b. OIL	c. SOLVENTS	d. CHEMICALS	e. SOLIDS	f. OTHER
AMOUNT	AMOUNT	AMOUNT: ~ 100 gal/mo. th	AMOUNT	AMOUNT	AMOUNT
UNIT OF MEASURE	UNIT OF MEASURE	UNIT OF MEASURE: or less	UNIT OF MEASURE	UNIT OF MEASURE	UNIT OF MEASURE
				X (1) FLYASH	X (1) LABORATORY, PHARMACEUT.
X (1) PAINT, PIGMENTS	X (1) OILY WASTES	X (1) HALOGENATED SOLVENTS	X (1) ACIDS	(2) ASBESTOS	(2) HOSPITAL
(2) METALS SLUDGES	(2) OTHER(specify):	X (2) NON-HALOGNTD. SOLVENTS	(2) PICKLING LIQUORS	(3) MILLING/MINE TAILINGS	(3) RADIOACTIVE
(3) POTW		(3) OTHER(specify): methyl ethyl ketone	(3) CAUSTICS	(4) FERROUS SMELTING WASTES	(4) MUNICIPAL
(4) ALUMINUM SLUDGE			(4) PESTICIDES	(5) NON-FERROUS SMLTG. WASTES	(5) OTHER(specify):
(5) OTHER(specify):			(5) DYES/INKS	(6) OTHER(specify):	
			(6) CYANIDE		
			(7) PHENOLS		
			(8) HALOGENS		
			(9) PCB		
			(10) METALS		
			(11) OTHER(specify):		

9. LIST SUBSTANCES OF GREATEST CONCERN WHICH ARE ON THE SITE (place in descending order of hazard)

1. SUBSTANCE	2. FORM (mark 'X') a. SOLID	b. LIQ.	c. VAPOR	3. TOXICITY (mark 'X') a. HIGH	b. MED.	c. LOW	d. NONE	4. CAS NUMBER	5. AMOUNT	6. UNIT
Methyl Ethyl Ketone		Y							100 gal/mon.	

VIII. HAZARD DESCRIPTION

FIELD EVALUATION HAZARD DESCRIPTION: Place an 'X' in the box to indicate that the listed hazard exists. Describe the hazard in the space provided.

☐ A. HUMAN HEALTH HAZARDS

NONE

Continue On Page 5

(Continued From Page 4)

II. HAZARD DESCRIPTION (continued)

☐ B. NON-WORKER INJURY/EXPOSURE

N/A

☐ C. WORKER INJURY/EXPOSURE

N/A

☒ D. CONTAMINATION OF WATER SUPPLY

Not likely, but wash from machinery containing small amounts of methyl ethyl ketone are washed down the drains and into a dry well. The dry well is pumped out by Hancock Sanitation Service twice a year, 2000 gal. each time. About 100 gal. of MEK are used per month to thin paint + to clean machinery. Also a biodegradable soap is also used.

☐ E. CONTAMINATION OF FOOD CHAIN

Houses in the area are on a well water system. Wells are about 190 to 250 ft deep in this area.

N/A

☐ F. CONTAMINATION OF GROUND WATER

N/A

☐ G. CONTAMINATION OF SURFACE WATER

N/A

HAZARD DESCRIPTION (continued)

☐ H. DAMAGE TO FLORA/FAUNA

N/A

☐ I. FISH KILL

N/A

☐ J. CONTAMINATION OF AIR

N/A

☑ K. NOTICEABLE ODORS

Solvent + paint odor.

☐ L. CONTAMINATION OF SOIL

N/A

☐ M. PROPERTY DAMAGE

N/A

Continue On Page 7

VIII. HAZARD DESCRIPTION (continued)

☐ N. FIRE OR EXPLOSION

N/A

☐ O. SPILLS/LEAKING CONTAINERS/RUNOFF/STANDING LIQUID

N/A

☒ P. SEWER, STORM DRAIN PROBLEMS

Waste is put in dry well + pumped out by Lambert once every 6 months or so. (2000 gal/6 mos)

See "VIII D, Contamination of water supply.

☐ Q. EROSION PROBLEMS

N/A

☐ R. INADEQUATE SECURITY

~~Fence~~ Alarm system. All drums of MEK are locked up in a shed. A total of 4 drums on site at the time of the inspection.

☐ S. INCOMPATIBLE WASTES

N/A

Continue On Reverse

VIII. HAZARD DESCRIPTION (continued)

☐ T. MIDNIGHT DUMPING

N/A

☐ U. OTHER (specify):

N/A

IX. POPULATION DIRECTLY AFFECTED BY SITE

A. LOCATION OF POPULATION	B. APPROX. NO. OF PEOPLE AFFECTED	C. APPROX. NO. OF PEOPLE AFFECTED WITHIN UNIT AREA	D. APPROX. NO. OF BUILDINGS AFFECTED	E. DISTANCE TO SITE (specify units)
1. IN RESIDENTIAL AREAS	fairly dense residential area.			1 c FT.
2. IN COMMERCIAL OR INDUSTRIAL AREAS				
3. IN PUBLICLY TRAVELLED AREAS				
4. PUBLIC USE AREAS (parks, schools, etc.)				

X. WATER AND HYDROLOGICAL DATA NOT RESEARCHED

A. DEPTH TO GROUNDWATER (specify unit)	B. DIRECTION OF FLOW	C. GROUNDWATER USE IN VICINITY
D. POTENTIAL YIELD OF AQUIFER	E. DISTANCE TO DRINKING WATER SUPPLY (specify unit of measure)	F. DIRECTION TO DRINKING WATER SUPPLY

G. TYPE OF DRINKING WATER SUPPLY

☐ 1. NON-COMMUNITY < 15 CONNECTIONS ☐ 2. COMMUNITY (specify town): > 15 CONNECTIONS _____

☐ 3. SURFACE WATER ☐ 4. WELL

Continue On Page 9

Continued From Page 8

X. WATER AND HYDROLOGICAL DATA (continued) NOT RESEARCHED

H. ALL DRINKING WATER WELLS WITHIN A 1/4 MILE RADIUS OF SITE

1. WELL	2. DEPTH (specify unit)	3. LOCATION (proximity to population/buildings)	4. NON-COMMUNITY (mark 'X')	5. COMMUNITY (mark 'X')

I. RECEIVING WATER

1. NAME

☐ 2. SEWERS ☐ 3. STREAMS/RIVERS ☐ 4. LAKES/RESERVOIRS ☐ 5. OTHER (specify):

6. SPECIFY USE AND CLASSIFICATION OF RECEIVING WATERS

XI. SOIL AND VEGITATION DATA NOT RESEARCHED

LOCATION OF SITE IS IN:

☐ A. KNOWN FAULT ZONE ☐ B. KARST ZONE ☐ C. 100 YEAR FLOOD PLAIN ☐ D. WETLAND

☐ E. A REGULATED FLOODWAY ☐ F. CRITICAL HABITAT ☐ G. RECHARGE ZONE OR SOLE SOURCE AQUIFER

XII. TYPE OF GEOLOGICAL MATERIAL OBSERVED NOT RESEARCHED

Mark 'X' to indicate the type(s) of geological material observed and specify where necessary, the component parts.

'X'	A. OVERBURDEN	'X'	B. BEDROCK (specify below)	'X'	C. OTHER (specify below)
	1. SAND				
	2. CLAY				
	3. GRAVEL				

XIII. SOIL PERMEABILITY NOT RESEARCHED

☐ A. UNKNOWN ☐ B. VERY HIGH (100,000 to 1000 cm/sec.) ☐ C. HIGH (1000 to 10 cm/sec.)

☐ D. MODERATE (10 to .1 cm/sec.) ☐ E. LOW (.1 to .001 cm/sec.) ☐ F. VERY LOW (.001 to .00001 cm/sec.)

G. RECHARGE AREA

☐ 1. YES ☐ 2. NO 3. COMMENTS:

H. DISCHARGE AREA

☐ 1. YES ☐ 2. NO 3. COMMENTS:

I. SLOPE

1. ESTIMATE % OF SLOPE

2. SPECIFY DIRECTION OF SLOPE, CONDITION OF SLOPE, ETC.

J. OTHER GEOLOGICAL DATA

Continue On Reverse

XIV. PERMIT INFORMATION

List all applicable permits held by the site and provide the related information.

A. PERMIT TYPE (e.g. CRA, State, NPDES, etc.)	B. ISSUING AGENCY	C. PERMIT NUMBER	D. DATE ISSUED (mo., day, & yr.)	E. EXPIRATION DATE (mo., day, & yr.)	F. IN COMPLIANCE (mark 'X') 1. YES	2. NO	3. UNKNOWN
See attached titles							
No permits applied for.							

XV. PAST REGULATORY OR ENFORCEMENT ACTIONS

☑ NONE ☐ YES (summarize in this space)

NOTE: Based on the information in Sections III through XV, fill out the Tentative Disposition (*Section II*) information on the first page of this form.

CHECKLIST

1. Does your facility handle hazardous wastes (as defined by RCRA)?

Company president does not believe so. Uses approx 100 gal of methyl ethyl ketone / month. See attached letter.

2. If yes, what types of hazardous waste handling do you do; i.e. treatment, storage, or disposal?

3. If yes to above, did you notify U.S. EPA of your waste handling activities (notification process)?

4. If yes, have you received your EPA Identification Number? What is your I.D. number?

5. If yes to above, have you submitted a Part A RCRA Permit Application to U.S. EPA?

this map in my notes from the YAC sweep. I thought you might find it helpful if you're still working on Dice decal.

Ellen

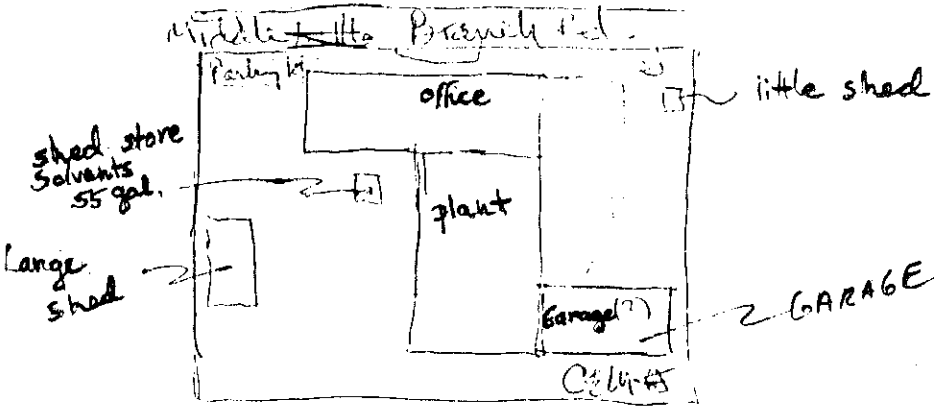
DICE

RAGS ARE USED TO CLEAN MACHINERY.

1st ~ 100 gal

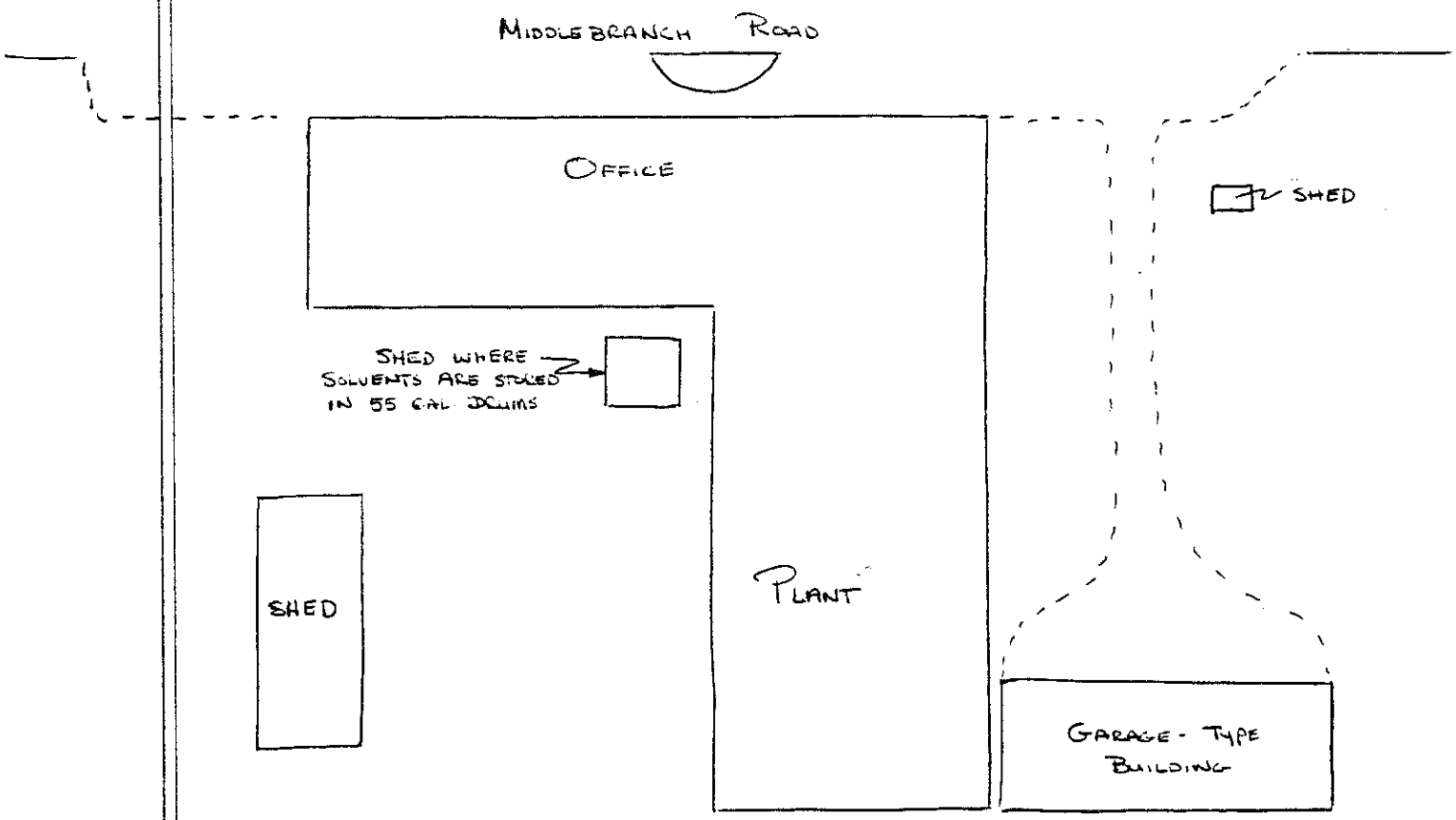
Solvent/month

(MEK)



SITE SKETCH FOR DICE DECAL CORP.
P.O. BOX 165
7390 MIDDLE BRANCH RD.
MIDDLE BRANCH, OHIO 44652

NOT TO SCALE



NOV 20, 1980

OH-235-05

ecology and environment, inc.

223 WEST JACKSON BLVD., CHICAGO, ILLINOIS 60606, TEL. 312-663-9415

International Specialists in the Environmental Sciences

DATE: October 30, 1981

TO: Rene Van Someren

FROM: Ron St. John

RE: Ohio / TDD# F5-8110-1
Middlebranch / Dice Decal

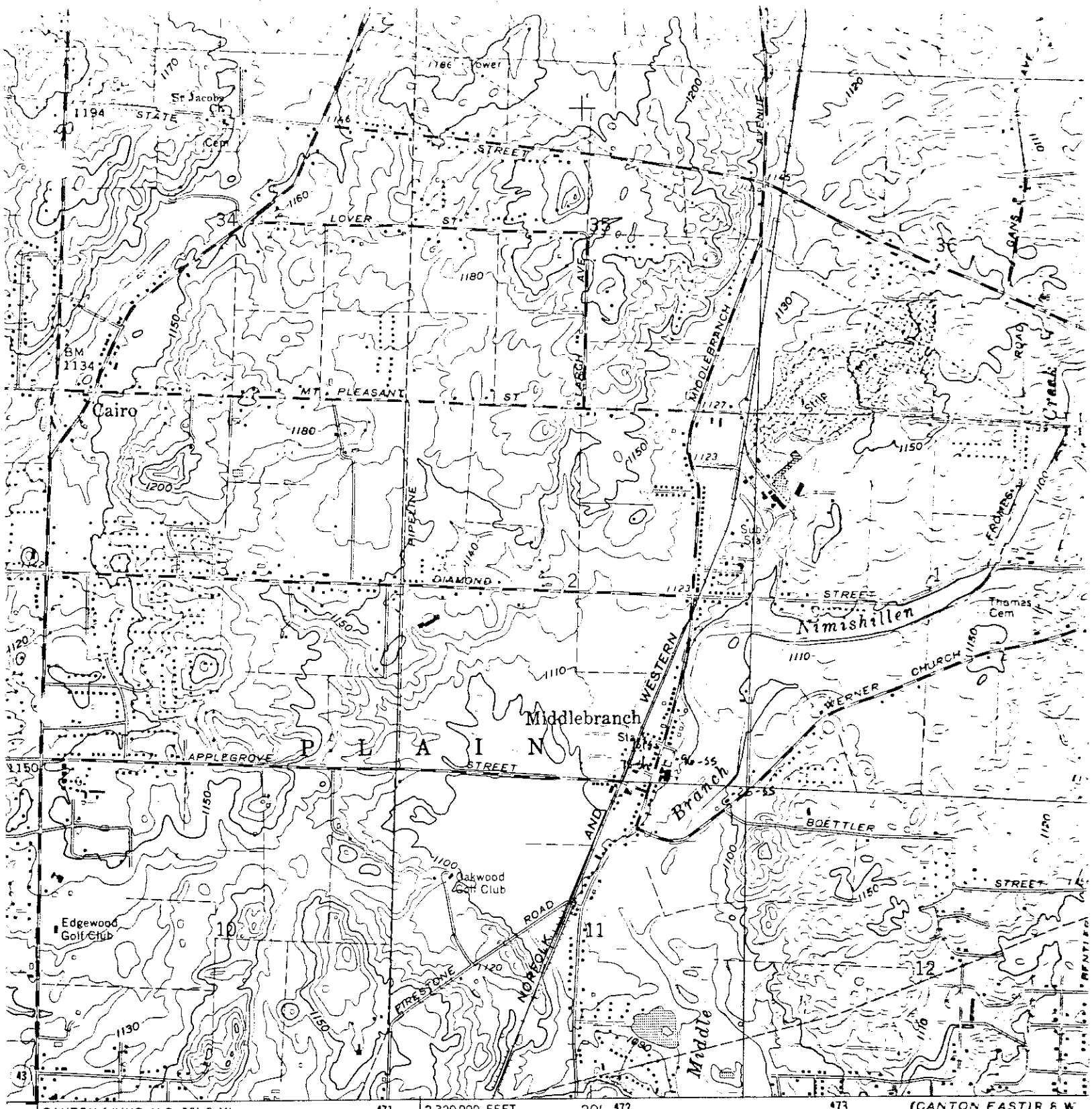
Problem

Dice Decal Corporation of Middlebranch, Ohio (Figure 1) produces decals which are used for fleet markings on trucks. Paint and solvent (methyl ethyl ketone) wash rinses from the production process are stored in a dry well on site and removed about twice a year, 2000 gallons at a time.

Presently, there is concern that local residents' wells are in danger of being contaminated by this storage well.

Geology

The northern three quarters of Stark County lies in an area covered by the Illinoian and Wisconsinan glaciations of the Pleistocene Epoch. The generalized glacial deposits map of Ohio (Figure 2) indicates that Middlebranch is on a large north-south trending kame and esker deposit. These unconsolidated ice contact deposits tend to be stratified, somewhat laterally continuous, and lithologically similar to alluvial deposits. The boring logs (Appendix I) indicate that the glacial drift consists of abundant clays surficially with some thick units of sand and gravel at moderate depths (25 to 50 feet). The glacial drift is underlain by a basal, discontinuous, hardpan clay capping the bedrock.



published by the Geological Survey

C&GS

otographs by photogrammetric methods
1952. Field check 1960

27 North American datum
Ohio rdinate system, north zone
nsverse Mercator grid ticks,

cate selected fence and field lines where
photographs. This information is unchecked

s Lands North of Old Seven Ranges
Land lines within Connecticut
ed by private subdivision

MN GN
5° 89 MILS
0°12' 4 MILS

UTM GRID AND 1978 MAGNETIC NORTH
DECLINATION AT CENTER OF SHEET

SCALE 1:24 000

1000 0 1000 2000 3000 4000

CONTOUR INTERVAL 10 FEET
NATIONAL GEODETIC VERTICAL DATUM O

THIS MAP COMPLIES WITH NATIONAL MAP ACCUR
FOR SALE BY U. S. GEOLOGICAL SURVEY, RESTON
A FOLDER DESCRIBING TOPOGRAPHIC MAPS AND SYMBOLS IS

Figure 1.

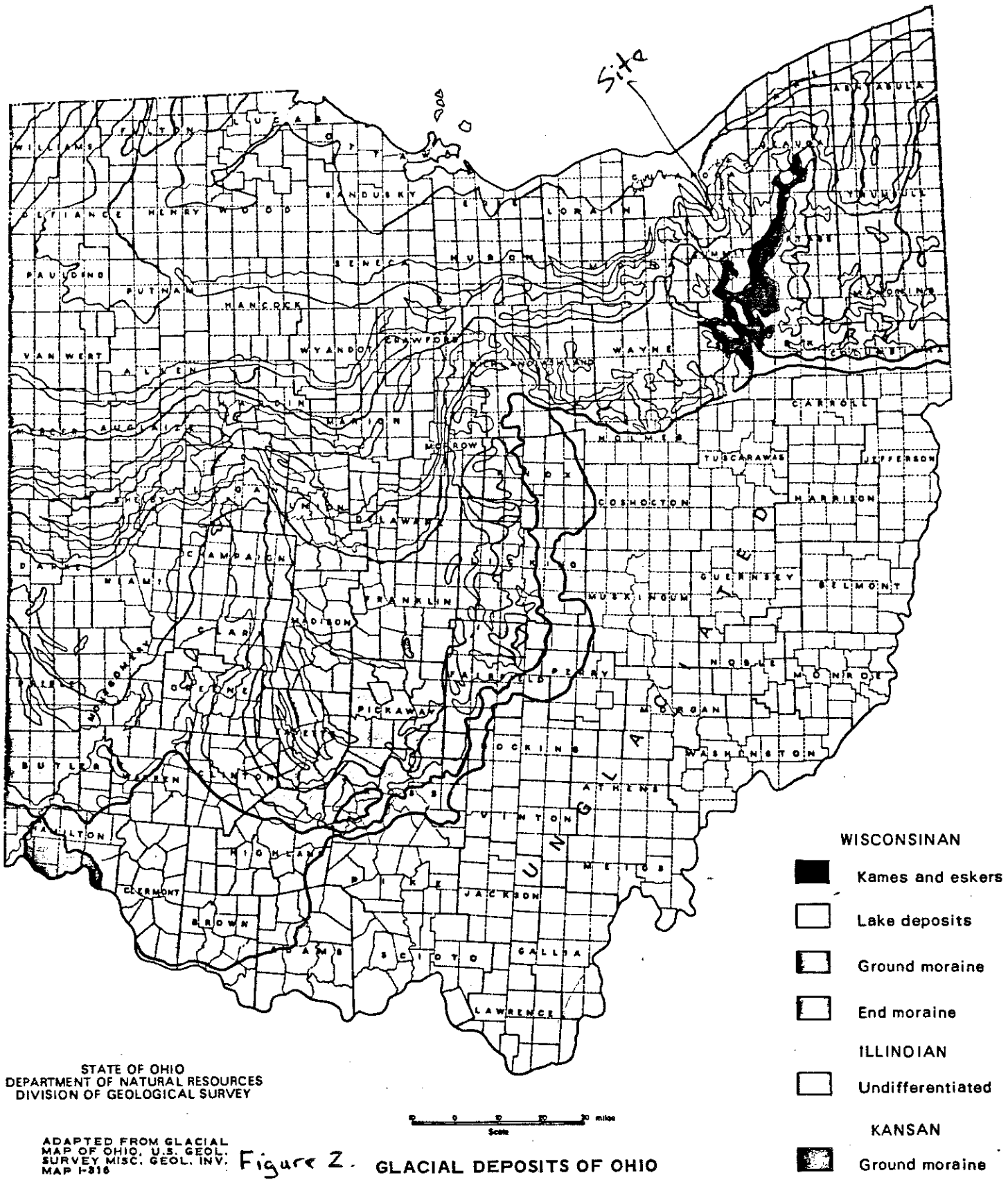


Figure 2. GLACIAL DEPOSITS OF OHIO

TDD# F5-8110-1
Dice Decal

Bedrock in the site vicinity is composed of interbedded Pennsylvanian (Pottsville group) shale, limestone and sandstone which varies in depth from approximately 45 to 90 feet. Since topographic relief in the area is minimal, it must be assumed that the bedrock surface relief accounts for this variation.

Hydrogeology

Middlebranch, Ohio lies in an area of groundwater discharge to the Nimishillen Creek drainage net of the Sandy Creek Basin (Figure 3). Areas downstream on Middle Branch Creek and most parts of the East and West Branch of Nimishillen Creek are areas of groundwater recharge. In these areas of groundwater recharge, large yields (1000 gpm) in wells are common in both bedrock and unconsolidated deposits due to creek infiltration. Therefore, it is probably safe to assume that groundwater flows east of southeast toward the creek in the unconsolidated deposits near the site.

The unconsolidated glacial drift and bedrock in the Middlebranch vicinity can be expected to yield up to twenty-five gpm to wells. These yields would amply support domestic needs and therefore are valuable water resources.

The bedrock aquifer with its discontinuous cap of hardpan clay is less susceptible to surface pollution in this area. Where this clay unit exists, it is likely to provide both a significant barrier to vertical groundwater movement as well as pronounced attenuation of pollutants. The well yields in the bedrock are limited to five to twenty-five gpm.

TDD# F5-8110-1
Dice Decal

Conclusions

1) The original site inspection report (Appendix II) indicated that about 100 gallons of solvents were used per month in the production process and that 2,000 gallons of wash water was pumped from the storage well biannually. There is no estimate of the amount of waste pumped into the well. Without this information and well characteristics, such as depth, diameter, water level, and casing type, it is difficult to make an assessment of the problem.
2) It does seem reasonable to assume, however, that the soils in which the well lies are fairly impermeable. Two reasons for this assumption are that boring logs indicate a clayey upper unit and that the well needs to be pumped out every year. The latter reason indicating that with increased head (from filling) the increased flow rate out of the well is not substantial.
3) The fact that the storage well is an abandon dry water well indicates "tight soils" and suggests abundant clays. The significance of the clays inplace is that they aid in the attenuation of heavy metals via ion exchanges. Organic contaminant movement would probably be inhibited as well.
4) At present, 4000 gallons of waste water rinses are removed from the storage well annually. If the amount introduced into the well is substantially greater than this amount and the concentration of contaminants in the water is significant, then there is indeed a probability that groundwater in the area is being contaminated.

Recommendation

A supplemental site inspection should take place to perform: 1) a determination of the well characteristics (depth, diameter, casing, water level); 2) sampling of the well water; and 3) a determination of the amount of waste introduced to the well each year.

RSJ/df

Appendix I

WELL LOG AND DRILLING REPORT

ORIGINAL

State of Ohio
DEPARTMENT OF NATURAL RESOURCES
Division of Water
1500 Dublin Road
Columbus, Ohio

No. 195516

County Stark Township Plain Section of Township 11

Owner Diamond Portland Cement Co Address Middlebranch O.

Location of property Cement Plant in Middlebranch

CONSTRUCTION DETAILS

Casing diameter 12" Length of casing 645'

Type of screen — Length of screen —

Type of pump

Capacity of pump

Depth of pump setting

Date of completion

BAILING OR PUMPING TEST

Pumping rate 175 G.P.M. Duration of test 5 hrs.

Drawdown 155 ft. Date Mar. 1, 1957

Developed capacity 175 g.p.m.

Static level—depth to water 45 ft.

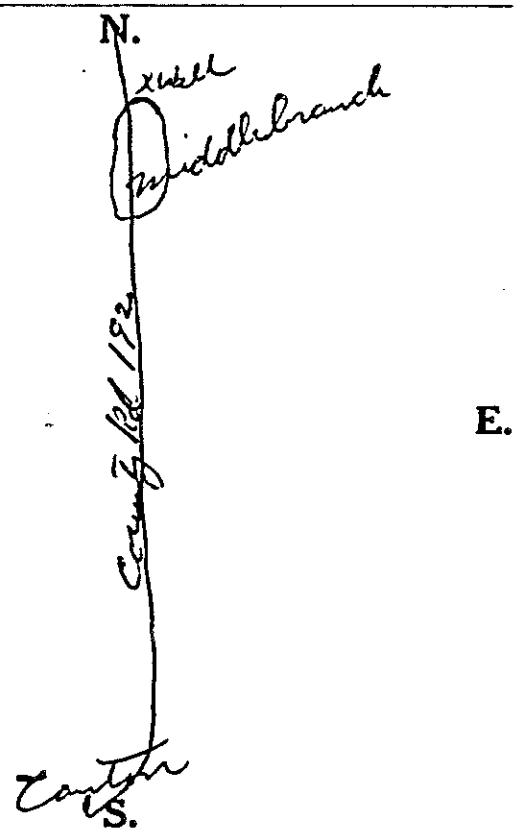
Pump installed by

WELL LOG

Formations Sandstone, shale, limestone, gravel and clay	From	To
fill	0 Feet	20 Ft.
shale	20	75 "
fire clay	75	78 "
shale	78	126 "
sand rock	126	131 "
sandy shale	131	142 "
sand rock	142	174 "
shale	174	230 "
sand rock	230	270 "
shale	270	331 "
sand rock	331	368 "
shale	368	386 "
sand rock	386	402 "
shale	402	425 "

SKETCH SHOWING LOCATION

Locate in reference to numbered State Highways, St. Intersections, County roads, etc.



See reverse side for instructions

Drilling Firm M. J. Engel Drilling Co. Date Mar. 1, 1957

Address R.D. 2 Wilmillan O. Signed M. J. Engel

20.

ORIGINAL

19

LOCATED

'FI L LOG AND DRILLING REI RT

State of Ohio
DEPARTMENT OF NATURAL RESOURCES
Division of Water
Columbus, Ohio

No 161529

County Stark Township Plain Section of Township or Lot Number 1

Owner Williard Mellon Address Middlebranch, Ohio

Location of property East of Diamond Portland Cement Co.

CONSTRUCTION DETAILS

Casing diameter 4-inches Length of casing 42 feet
Type of screen none Length of screen
Type of pump deep well
Capacity of pump 350 gph
Depth of pump setting 60 feet

PUMPING TEST

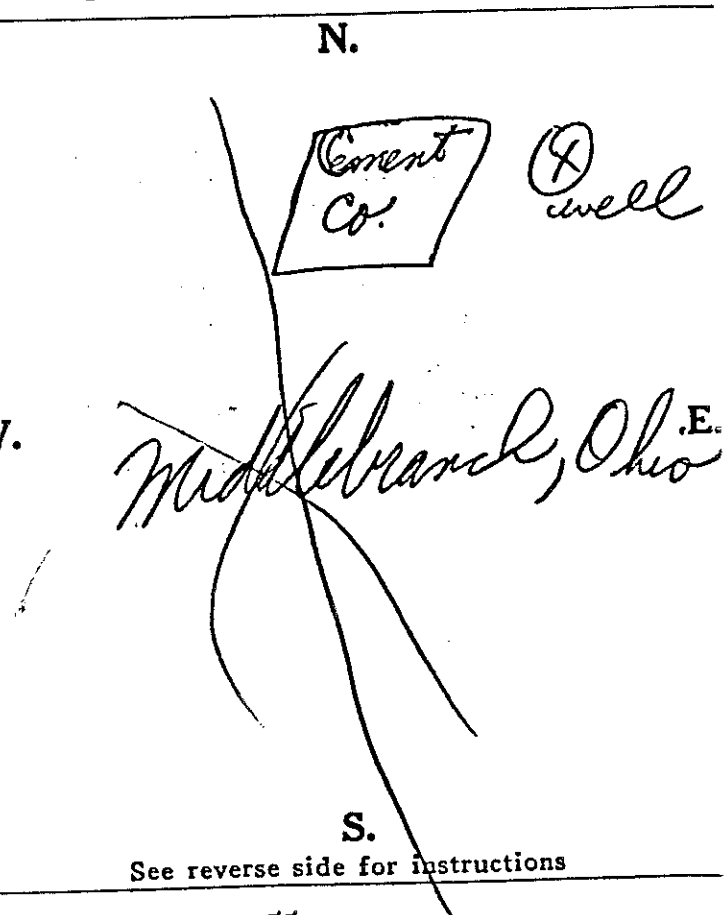
Pumping rate 6 G.P.M. Duration of test 1 hrs.
Drawdown 8 ft. Date 12-12-55
Developed capacity 360 gph plus
Static level—depth to water 37 ft.
Pump installed by

WELL LOG

Formations Sandstone, shale, limestone, gravel and clay	From	To
Overburden	0 Feet	26 Ft.
Clay	26	38
Fireclay	38	49
Shale	49	62
Sandstone	62	72
Shale	72	75
Water at 58 feet.		

SKETCH SHOWING LOCATION

Locate in reference to numbered State Highways, St. Intersections, County roads, etc.



See reverse side for instructions

Drilling Firm BROGAN DRILLING COMPANY
Address 2315 Daleford Ave. N.E. Canton, Ohio

Date 12-12-55
Signed Paul D. Brogan

19

WELL LOG AND DRILLING REPORT

State of Ohio
DEPARTMENT OF NATURAL RESOURCES
Division of Water
Columbus, Ohio

LOCATED

No 98320

County Stark Township Plain Section of Township or Lot Number

Owner Weldon Poney Address Prospect Middlebranch, Ohio

Location of property Prospect Middlebranch, Ohio

CONSTRUCTION DETAILS

Casing diameter 4" Length of casing 34'

Type of screen Length of screen

Type of pump

Capacity of pump

Depth of pump setting

PUMPING TEST

Pumping rate 7 G.P.M. Duration of test 1 hrs.

Drawdown 18 ft. Date Sept. 17, 1952

Developed capacity 7 G.P.M.

Static level—depth to water 28' ft.

Pump installed by

WELL LOG

Formations Sandstone, shale, limestone, gravel and clay	From	To
Sand-gravel-clay	0 Feet	12 Ft.
gravel sand-little clay	12	18
Limestone	13	23
Black rotten shale	23	25
Blue shale	25	52
Dark gray shale	52	57
Sand rock	57	60

SKETCH SHOWING LOCATION

Locate in reference to numbered State Highways, St. Intersections, County roads, etc.

N.

W. E.

S.

See reverse side for instructions

Drilling Firm R.G.Stark

Address R.D.#1 Louisville, Ohio

Date Sept. 22, 1952

Signed R. G. Stark

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WELL LOG AND DRILLING REPORT

State of Ohio
DEPARTMENT OF NATURAL RESOURCES
Division of Water
Columbus, Ohio

No 107099

County Clark Township Pleasant Section of Township or Lot Number 2

Owner Diamond Portland Cement Co Address Middle Branch O

Location of property Plant office on Middle Branch

CONSTRUCTION DETAILS

Casing diameter 8" Length of casing 191 ft.

Type of screen Length of screen

Type of pump

Capacity of pump

Depth of pump setting

PUMPING TEST

Pumping rate 100 G.P.M. Duration of test 4 hrs.

Drawdown 17 ft. Date Jan 26 1954

Developed capacity 100 G.P.M.

Static level—depth to water 110' ft.

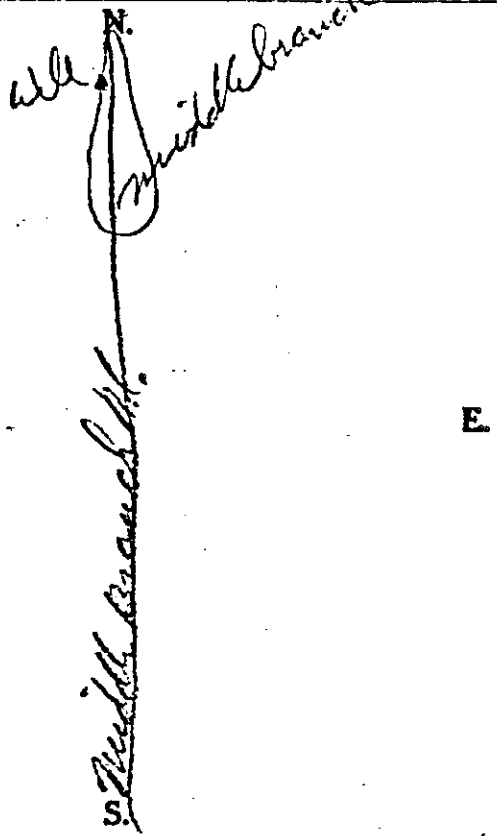
Pump installed by

WELL LOG

Formations Sandstone, shale, limestone, gravel and clay	From	To
clay, sand & gravel	0 Feet	60 Ft.
shale	60	100 "
sand rock	100	178 "
shale	178	197 "
sand rock	197	218 "
shale	218	231 "
sand rock	231	254 "
shale	254	284 "
sand rock	284	316 "
shale	316	329 "
sand rock	329	337 "

SKETCH SHOWING LOCATION

Locate in reference to numbered State Highways, St. Intersections, County roads, etc.



See reverse side for instructions

Drilling Firm W. H. Engel Drilling Co Date Jan 26 1954

Address R D #2 Mechanicsburg O Signed W. H. Engel

WELL LOG AND DRILLING REPORT

WELL LOG AND DRILLING REPORT

ORIGIN

ORIGINAL

PLEASE USE PENCIL OR TYPEWRITER. DO NOT USE INK.

State of Ohio
DEPARTMENT OF NATURAL RESOURCES
Division of Water
1562 W. First Avenue
Columbus, Ohio

No. 225238

County [illegible] Township [illegible] Section of Township 2

Owner [illegible] Address [illegible]

Location of property [illegible]

CONSTRUCTION DETAILS

Casing diameter [illegible] Length of casing [illegible]

Type of screen [illegible] Length of screen [illegible]

Type of pump deep well

Capacity of pump [illegible]

Depth of pump setting [illegible]

Date of completion [illegible]

BAILING OR PUMPING TEST

Pumping rate 18 G.P.M. Duration of test 1 hrs.

Drawdown 18 ft. Date 10-11-61

Developed capacity 1080 gph

Static level—depth to water 36 ft.

Pump installed by [illegible]

WELL LOG

Formations Sandstone, shale, limestone, gravel and clay	From	To
Soil - clay	0 Feet	20 Ft.
Sand [illegible] gr vel	20 ft.	40½ "
Clay & shale	40½ ft.	70 "
Sand, coal & gravel mix	70 ft.	78 "
Shale	78 ft.	87 ft.

SKETCH SHOWING LOCATION

Locate in reference to numbered State Highways, St. Intersections, County roads, etc.

N.

W.

E.

S.

See reverse side for instructions

Drilling Firm Brogan Drilling Co.

Address 7303 Columbus St. P.E. Louisville, Ohio

Date Oct. 11, 1961

Signed Paul D. Brogan

by Mrs. Brogan

ORIGINAL

V L LOG AND DRILLING REI RT

596

State of Ohio
DEPARTMENT OF NATURAL RESOURCES
Division of Water
1500 Dublin Road
Columbus, Ohio

No. 215925

County Stark Township Plain Section of Township 2

Owner Maurice Short Address Bt 104 Middlebranch, Ohio

Location of property 8TH house on left on E. Maple in Middlebranch

CONSTRUCTION DETAILS

Casing diameter 4" Length of casing 185' 11"

Type of screen Length of screen

Type of pump

Capacity of pump

Depth of pump setting

Date of completion

BAILING ~~OR PUMPING~~ TEST

Pumping rate G.P.M. Duration of test hrs.

Drawdown 24 ft. Date 3-4-58

Developed capacity 15 gpm

Static level—depth to water 36 ft.

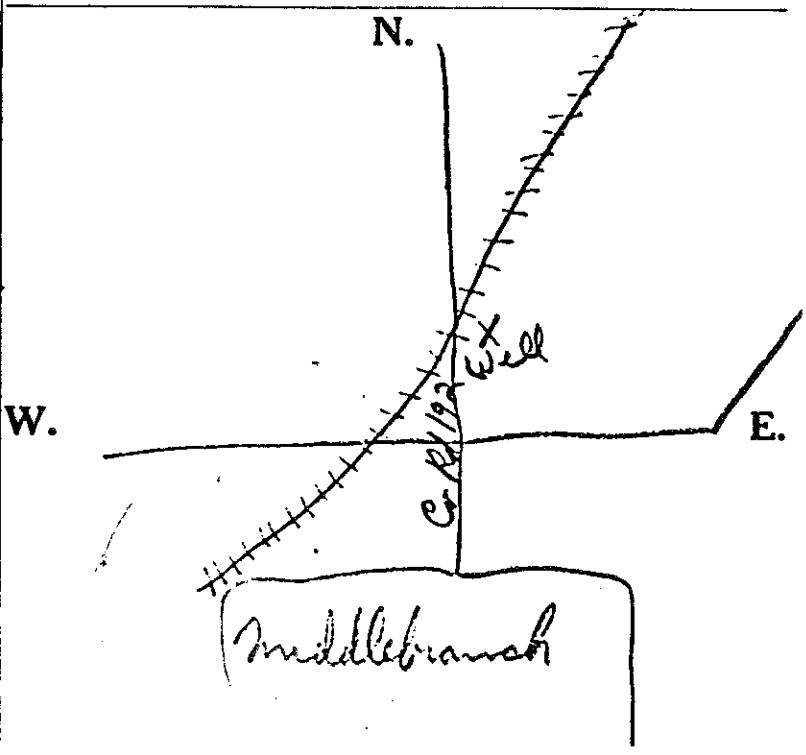
Pump installed by

WELL LOG

Formations Sandstone, shale, limestone, gravel and clay	From	To
Washed	0 Feet	27 Ft.
Clay	29'	31'
Dry Sandy	31'	41'
Dry Plastic	41'	52' 6"
Limestone	52' 6"	57' 6"
Dray Shale	57' 6"	69' 6"
Limestone	69' 6"	71' 6"
Dray Shale	71' 6"	78'
Sandrock	78'	175'
Dark Shale	175'	179'
Coal	179'	180'
Clay	180'	182'
Dray Sandy	182'	205'
Light Dray Sandrock 2 to at 219'	205'	228'

SKETCH SHOWING LOCATION

Locate in reference to numbered State Highways, St. Intersections, County roads, etc.



See reverse side for instructions

Drilling Firm Everett Walty & Co. Inc. Date 3-22-58

Address Strasburg, Ohio Signed Rh. D. Shively

Appendix II

Complainant Exhibit 7

RCRA ENFORCEMENT ACTION SIGN-OFF — Dimock / Rekar

PART I. BACKGROUND

FACILITY NAME: GRADY McCAULEY, CREATIVE GRAPHICS INC.

FACILITY LOCATION: MIDDLEBRANCH, OHIO

RCRA ID NUMBER: NON-NOTIFIER

NATURE OF VIOLATION: STORAGE & DISPOSAL W/o PERMIT OR INTERIM STATUS

SHIPMENT OFF SITE TO A NON-PERMITTED FACILITY VIA NON RCRA TRANSPORTER

ANY OTHER OUTSTANDING OR PAST ENFORCEMENT ACTIONS AGAINST THIS FACILITY:

WATER: NONE

AIR: NONE

OTHER: NONE KNOWN

PART II. RECOMMENDATION: ISSUE A 3008 COMPLAINT WITH PENALTY

PART III. CONCURRENCES ON DRAFT

	INITIALS	DATE	AGREE	DISAGREE
PREPARER	[illegible]	6-12-85	(✓)	( )
CHIEF, RCRA ENF. UNIT	[illegible]	6-12-85	(✓)	( )
CHIEF, RCRA ENF. SECTION	WEM	6-14-85	(✓)	( )
ASSISTANT REGIONAL COUNSEL Pamela Rakrad	[illegible]	6/27/85 as modified	(✓)	( )

Rec'd 6/20

NAME & DATE OF STATE CONTACT NOTIFIED: Paula Cotton 6-25-85

PART IV. APPROVAL

1. PREPARER	RCR	6-24-85	(✓)	( )
2. CHIEF, RCRA ENF. UNIT	[illegible]	6-28-85	(✓)	( )
3. CHIEF, RCRA ENF. SECTION	WEM	6-28-85	(✓)	( )
4. CHIEF, H.W. ENF. BRANCH / Acting	WEM	6-28-85	(✓)	( )
5. ASSISTANT REGIONAL COUNSEL Rekar	[illegible]	6/28/85	(✓)	( )
6. CHIEF, S.W. & E.R. SECTION	[illegible]	6/28	(✓)	( )
7. CHIEF, SOLID WASTE & EMER. RESPONSE BRANCH	[illegible]	6/28	(✓)	( )
8. REGIONAL COUNSEL (WES 6/28)	[illegible]	6/28	(✓)	( )
9. DIRECTOR, WASTE MGT. DIV.	DAS	6/28	(✓)	( )

NOTE TYPO ON PG 1 OF ORDER

NOTE: Attach sign-off sheet to yellow copy of the enforcement action.

Complainant Exhibit 8

APR 22 1986

CERTIFIED MAIL RETURN
RECEIPT REQUESTED

5CS-16

Kenneth Moore, Esq.
Squire, Sanders & Dempsy
1800 Huntington Building
Cleveland, Ohio 44115

Re: Grady McCauley Creative Graphics, Inc.
Docket No.: V.W-85-R-35

Dear Mr. Moore:

Enclosed please find a copy of the documents I filed with the Regional Hearing Clerk today.

Please call me to discuss this case. My new phone number is (312) 886-7951. Thank you.

Sincerely,

T. Leverett Nelson
Assistant Regional Counsel

Enclosure

EPA:RC:SWERB:RNELSON:Desiree':4/22/86:DISK#5

TLN
4-22-86

APR 22 1986

5CS-16

Ms. Beverely Shorty
Regional Hearing Clerk
U.S. EPA, Region V
230 South Dearborn Street
Chicago, Illinois 60604

Re: Grady McCauley Creative Graphics, Inc.
Middlebranch, Ohio
Docket No. V-W-85-R-35

Dear Ms. Shorty:

Herewith, I am filing Complainant's MOTION FOR LEAVE TO FILE AN AMENDED COMPLAINT AND COMPLIANCE ORDER, an AMENDED COMPLAINT AND COMPLIANCE ORDER, and a CERTIFICATE OF SERVICE in the above-referenced matter.

Very truly yours,

T. Leverett Nelson
Assistant Regional Counsel

Enclosures

EPA:RC:SWERB:RNELSON:Desiree':3/21/86:DISK#4

TLN
3-28-86

4/1/86

4/11/86

4/11/86

4-15-86

4/11/86

received 4/11/86

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION V

IN THE MATTER OF:	)	
	)	Docket No. V-W-85-R-35
	)	
GRADY MCCAULEY CREATIVE GRAPHICS, INC. 7390 MIDDLEBRANCH ROAD MIDDLEBRANCH, OHIO 44652	)	MOTION FOR LEAVE TO FILE AN AMENDED COMPLAINT AND COMPLIANCE ORDER

NOW COMES THE Complainant, the Director of the Waste Management Division of the United States Environmental Protection Agency (U.S. EPA), Region V, by and through his attorney, and moves to file an Amended Complaint and Compliance Order in this matter, and states for this motion as follows:

1. On June 28, 1985, the Complainant filed a Complaint and Compliance Order in this matter pursuant to section 3008 of the Resource Conservation and Recovery Act, 42 U.S.C. §6928, alleging therein certain violations by the Respondent of Federal and State laws and regulations.

2. At the time the Complaint was filed, the State of Ohio had received Phase I interim authorization pursuant to Section 3006(b) of RCRA, 42 U.S.C. §6926(b). This authorization allowed U.S. EPA to enforce Ohio hazardous waste statutes and regulations. The Complaint and Compliance Order required Respondent to comply with applicable Ohio law.

3. On January 31, 1986, the State of Ohio lost Phase I interim authorization pursuant to Section 3006(e) of RCRA, 42 U.S.C. §6926(e). 51 Fed. Reg. 4128 (Jan. 31, 1986). Authority to implement the RCRA program has therefore reverted to U.S. EPA. U.S. EPA will enforce the Federal statute and regulations only. The Complaint and Compliance Order should order Respondent to comply with applicable Federal law only.

4. The proposed Amended Complaint and Compliance Order involves the same parties, and pertains to the same subject matter as that of the Complaint and Compliance Order filed on June 28, 1985. The Complainant does not seek to add any counts against Respondent or to change the penalty assessment in any way. The proposed amended Complaint and Compliance Order would merely cite Federal regulations that now apply to this action, rather than the State regulations which no longer apply.

WHEREFORE, the Complainant requests the court to grant this motion to file an Amended Complaint and Compliance Order, or order such other relief as is just and equitable.

Respectfully submitted,

By _____
T. Leverett Nelson
Assistant Regional Counsel
U.S. EPA, Region V
230 South Dearborn Street
Chicago, Illinois 60604

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION V

IN THE MATTER OF:	)	DOCKET No.:V-W-85-R-35
GRADY MCCAULEY CREATIVE GRAPHICS, INC. 7390 MIDDLEBRANCH ROAD MIDDLEBRANCH, OHIO 44652	)	COMPLAINT, FINDINGS OF VIOLATIONS AND COMPLIANCE ORDER

This Complaint and Compliance Order is filed pursuant to Section 3008(a)(1) of the Resource Conservation and Recovery Act of 1976 as amended (RCRA), 42 U.S.C. §6928(a)(1), and the U.S. Environmental Protection Agency's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 CFR Part 22. The Complainant is the Director, Waste Management Division, United States Environmental Protection Agency, Region V (U.S. EPA). The Respondent is Grady McCauley Creative Graphics, Incorporated, located at 7390 Middlebranch Road, Middlebranch, Ohio 44652.

This Complaint is based on information available to U.S. EPA, including information in records and a compliance inspection conducted on February 9, 1984 by the Ohio Environmental Protection Agency (OEPA). At the time of the inspection, violations of applicable State and Federal statutes were identified.

Pursuant to Section 3008(a)(1) of RCRA, 42 U.S.C. §6928(a)(1), and based on information cited above, it has been determined

that Grady McCauley Creative Graphics, Inc. has violated Sections 3005 and 3010 of RCRA, 42 U.S.C. §§6925 and 6930, regulations found at 40 CFR 124.3, 262.10, 262.41, 265.75, 265.94, 265.143, 265.145, 265.147, 270.1, and 270.10, and Ohio Administrative Code regulations 3745-52-10, -41, 3745-65-75, -94, 3745-66-43, -45 and -47.

JURISDICTION

Jurisdiction for this action is conferred upon U.S. EPA by Sections 1006(a), 2002(a)(1), 3006(b), 3006(e) and 3008 of RCRA, 42 U.S.C. §6905(a), §6912(a)(1), §6926(b), §6926(e) and §6928, respectively.

On July 15, 1983, the State of Ohio received Phase I interim authorization pursuant to Section 3006 of RCRA (42 U.S.C. §6926) to administer a hazardous waste program in lieu of the Federal program. This authorization allowed either the State or U.S. EPA to enforce Ohio hazardous waste statutes and regulations, where applicable, in lieu of the Federal statute and regulations. U.S. EPA had retained authority in matters related to the issuance of RCRA permits. On January 31, 1986, the State of Ohio lost Phase I interim authorization pursuant to Section 3006 of RCRA (42 U.S.C. §6926). 51 Fed. Reg 4128 (Jan. 31, 1986). Authority to implement the RCRA programs has therefore reverted to U.S. EPA. Accordingly, this Complaint and Compliance Order seeks to enforce the Federal statute and regulations as applicable.

FINDINGS

This determination of violation is based on the following:

1. Section 3010(b) of RCRA, 42 U.S.C. §6930(a), requires any person who generates or transports hazardous waste or owns or operates a facility for the treatment, storage or disposal of hazardous waste (hereafter "facility") to notify U.S. EPA of such activity within 90 days of the initial promulgation of regulations under Section 3001 of RCRA. Section 3010 of RCRA also provides that no hazardous waste subject to regulation may be transported, treated, stored, or disposed of unless the required notification has been given.

2. U.S. EPA published regulations under Section 3001 of RCRA on May 19, 1980. Notification to U.S. EPA of hazardous waste handling was required, in most instances, no later than August 18, 1980. These regulations, which concern the identification and listing of hazardous waste, are codified at 40 CFR Part 261. Regulations regarding the generation, transportation, treatment, storage and disposal of hazardous waste were also published on May 19, 1980, and are codified at 40 CFR Parts 260 and 262 through 265.

3. Section 3005(e) of RCRA, 42 U.S.C. §6925(e), provides that an owner or operator of a facility shall be treated as having been issued a permit pending final administrative disposition

of the permit application, provided that: (1) the facility was in existence on November 19, 1980 ("existing facility"); (2) the requirements of Section 3010(a) of RCRA concerning notification of hazardous waste activity have been met; and (3) timely application for a permit has been made. This statutory authority to operate is known as interim status. U.S. EPA regulations implementing these provisions are found at 40 CFR Part 270 Subpart G.

5. Respondent, Grady McCauley Creative Graphics, Inc., owns and operates an existing facility as that term is defined at 40 CFR 260.10, located at 7390 Middlebranch Road, Midddlebranch, Ohio. Respondent is an Ohio corporation whose registered agent is Dennis J. Grady, 7390 Middlebranch Road, Middlebranch, Ohio 44652.

6. An inspection of the facility was conducted by a representative of the Ohio Environmental Protection Agency (OEPA) on February 9, 1984. At the time of the inspection, Respondent was storing hazardous waste in an underground tank, and disposed of hazardous waste by discharging it from the tank into the surrounding soil. The facility stored and disposed of hazardous wastes listed for ignitability and toxicity under 40 CFR 261 Subpart D, and Ohio Administrative Code 3745-51-31. These wastes are identified as spent non-halogenated solvents (U.S. EPA Hazardous Waste Numbers F003 and F005).

7. Respondent failed to file a notification with U.S. EPA of its hazardous waste activity, thus violating Section 3010(a) of RCRA which requires such notification to have been filed on or before August 18, 1980.

8. Respondent has failed to submit to U.S. EPA a Part A permit application to treat, store, or dispose of hazardous waste, thus violating Section 3005(a) of RCRA and 40 CFR 124.3(a) and 270.10(a), which require such submission to have been made on or before November 19, 1980.

9. Interim status was not achieved because of Respondent's failure to comply with Section 3005(e) of RCRA. In addition, Respondent has neither applied for nor received a final RCRA permit for its storage and disposal activities. Respondent, therefore, is in violation of 40 CFR 270.1(c) and Section 3005(a) of RCRA.

10. The following violations were observed upon review of U.S. EPA and OEPA records:

(a) Failure to submit a report concerning generation, storage and disposal activities as required by 40 CFR 262.41 and 40 CFR 265.75 and Ohio Administrative Code 3745-52-41 and 3745-65-75;

(b) Failure to report groundwater monitoring information as required by 40 CFR 265.94 and Ohio Administrative Code 3745-65-94;

(c) Failure to establish financial assurance for closure and post-closure of the facility and liability insurance as required by 40 CFR 265.143, 265.145 and 265.147, and Ohio Administrative Code 3745-66-43, 3745-66-45 and 3745-66-47; and

(d) Failure to obtain a U.S. EPA Identification Number as required by 40 CFR 262.10 and Ohio Administrative Code 3745-52-10.

ORDER

Respondent having been initially determined to be in violation of the above-cited rules and regulations, the following Compliance Order pursuant to Section 3008(a)(1) of RCRA, 42 U.S.C. §6928(a)(1), is entered:

A. Respondent shall, within thirty (30) days of receipt of this Complaint and Compliance Order:

1. Submit to U.S. EPA and the OEPA, for the unpermitted storage and disposal areas, a closure plan which meets the requirements of 40 CFR 265.110 through 40 CFR 265.115. This closure plan must clearly detail the activities which will be undertaken by Respondent to identify, treat and/or remove and properly dispose of all hazardous waste at the facility including contaminated soil and groundwater. The closure plan shall include, but not be limited to:

(a) A method of determining and notifying U.S. EPA and OEPA of the extent of contamination and/or migration of hazardous waste (or hazardous waste constituents) at the facility. Some type of ground water monitoring shall be considered;

(b) The procedures to be used to treat and/or remove all hazardous waste and all standing liquids, groundwater, and underlying and surrounding soil which has been contaminated by hazardous waste (or hazardous waste constituents) disposed of at the facility;

(c) A description of the intended methods for management of the removed materials as well as a description of the location(s) where said material will be ultimately disposed;

(d) A description of activities to be performed by Respondent which require the presence of, and observation by, an independent registered professional engineer. An independent registered profesional enginer shall be present, at a minimum, during clean-up operations and containerization of all materials removed; and

(e) All other items required by 40 CFR 265.112.

B. U.S. EPA and OEPA will approve, disapprove or modify the plan. Respondent shall perform all closure activities detailed in the closure plan as finally approved, within 90 days of its approval.

C. Upon completion of the required closure activities, Respondent shall certify in writing to U.S. EPA and OEPA that the facility has been closed in accordance with the specifications in the approved closure plan. Respondent shall also submit, or cause to have submitted to U.S. EPA and OEPA, written certification of the same from the independent registered professional engineer that observed the closure activities.

D. Respondent shall notify U.S. EPA in writing upon achieving compliance with this Order and any part thereof. This notification shall be submitted no later than the times stipulated above to Mr. Paul Dimock, U.S. EPA, Region V, Waste Management Division, 230 South Dearborn Street, Chicago, Illinois 60604, Attention: RCRA Enforcement Section. A copy of these documents and all correspondence with U.S. EPA regarding this Order shall also be submitted to Paula Cotter, Division of Solid and Hazardous Waste Management, Ohio Environmental Protection Agency, 361 East Broad Street, Columbus, Ohio 43216.

Notwithstanding any other provision of this Order, an enforcement action may be brought pursuant to Section 7003 of RCRA or other statutory authority where the handling, storage, treatment, transportation, or disposal of solid or hazardous waste at this facility may present an imminent and substantial endangerment to health or the environment.

PROPOSED CIVIL PENALTY

Based upon the seriousness of the violation cited herein, the potential harm to human health and the environment, and the continuing nature of the violations, the Complaint proposes, in accordance with U.S. EPA penalty policy guidance, to assess a civil penalty in the amount of NINE THOUSAND FIVE HUNDRED DOLLARS ($9,500) against the Respondent, Grady McCauley Creative Graphics, Inc., pursuant to Section 3008(c) and 3008(g) of RCRA (42 U.S.C. §6928).

Failure to comply with any requirements of this Order shall subject Respondent to liability for a civil penalty of up to TWENTY-FIVE THOUSAND DOLLARS ($25,000) for each day of continued non-compliance with the Order. U.S. EPA is authorized to assess such penalties pursuant to RCRA Section 3008(c).

NOTICE OF OPPORTUNITY FOR HEARING

Respondent has already exercised its right to request a hearing. Respondent may contest any factual allegation set forth in the Amended Complaint or the appropriateness of any proposed compliance schedule or penalty at that hearing.

To avoid having the Compliance Order become final without further proceedings, Respondent must file a written answer to this amended Complaint with the Regional Hearing Clerk, U.S. EPA Region V, 230 South Dearborn Street, Chicago, Illinois 60604, within twenty (20) days of your receipt of this notice. A copy

of this answer and any subsequent documents filed in this action should also be sent to Mr. T. Leverett Nelson, Assistant Regional Counsel, at the same address.

Your answer should clearly and directly admit, deny, or explain each of the factual allegations of which you have knowledge. Said answer should contain: (1) a definite statement of the facts, circumstances, or arguments which constitute the grounds of defense, and (2) a concise statement of the facts which you intend to place at issue in the hearing. The denial of any material fact or the raising of any affirmative defense shall be construed as a request for a hearing.

SETTLEMENT CONFERENCE

You may confer informally with U.S. EPA concerning: (1) whether the alleged violations in fact occured as set forth above; (2) the appropriateness of the compliance schedule; and (3) the appropriateness of any penalty assessment in relation to the size of your business, the gravity of the violations, and the effect of the penalty on your ability to continue in business.

You may request an informal settlement conference at any time by contacting this office. However, any such request will not affect twenty day time limit for responding to this Amended Complaint and Compliance Order. U.S. EPA encourages all parties to pursue the possibility of settlement through informal

conferences. A request for an informal conference should be made in writing to Mr. Paul Dimock, Waste Management Division, the address cited above, or by calling him at (312) 886-4436.

DATED this 18th day of April, 1986.

Basil G. Constantelos, Director
Waste Management Division
U.S. Environmental Protection Agency
Region V

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION V

IN THE MATTER OF:	)	
	)	DOCKET NO. V-W-85-R-35
GRADY MCCAULEY CREATIVE GRAPHICS, INC.	)	
7390 MIDDLEBRANCH ROAD	)	CERTIFICATE OF SERVICE
MIDDLEBRANCH, OHIO 44652	)	

I hereby certify that on the date indicated below a copy of the foregoing MOTION FOR LEAVE TO FILE AN AMENDED COMPLAINT AND COMPLIANCE ORDER and the foregoing AMENDED COMPLAINT AND COMPLIANCE ORDER were personally served on the following individual:

Beverely Shorty
Regional Hearing Clerk
U.S. EPA, Region V
230 South Dearborn Street
Chicago, Illinois 60604

and were served via first class certified mail on the following individual:

Kenneth Moore, Esq.
Squire, Sanders & Dempsey
1800 Huntington Building
Cleveland, Ohio 44115

DATED Nov. 22, 1986

BY T. Leverett Nelson
T. Leverett Nelson
Assistant Regional Counsel
U.S. EPA, Region V
230 S. Dearborn Street
Chicago, Illinois 60604

Complainant Exhibit 9

JUN 27 1986

SCR-16

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

The Honorable Spencer T. Nissen
Office of Administrative Law Judges (A-110)
U.S. Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460

RE: Grady McCauley Creative Graphics, Inc.
Docket No. RCRA-V-W-86-R-35

Dear Judge Nissen:

Enclosed please find a motion for extension of time in which to file the prehearing exchange. Certain documents essential to the filing of the prehearing exchange are presently unavailable. In addition, the parties are continuing settlement negotiations. Counsel for Complainant, with the consent of counsel for Respondent, petitions you to extend the deadline for filing up to and including July 11, 1986.

Thank you very much.

Respectfully yours,

T. Jeverett Nelson
Assistant Regional Counsel
(312) 886-7551

cc: Kenneth Nacin, Esq.
Counsel for Respondent

TLJ 6/24/86

RA:RC:SWJRE:RNELSON:Desiree':6/27/86:file95

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION V

IN THE MATTER OF:	)	
	)	
GRADY MCCAULEY CREATIVE GRAPHICS, INC.	)	DOCKET NO. V-W-85-R-35
	)	MOTION FOR EXTENSION
	)	
	)	

Counsel for Complainant petitions the Court for an extension of time in which file the first prehearing exchange in the above-captioned matter. The grounds for the extension are as follows:

1) Certain documents essential to the filing of the prehearing exchange are presently unavailable. It is anticipated that the Ohio EPA could supply these documents in two weeks' time.

2) The parties are continuing settlement negotiations. In two weeks' time, the parties will know whether the current impasse regarding the amount of the penalty can be resolved.

WHEREFORE, counsel for Complainant, with the consent of the counsel for Respondent, therefore respectfully moves to extend the date for filing the prehearing exchange to July 11, 1986. Replies to the prehearing exchange would then be due July 25, 1986.

T. Leverett Nelson

T. Leverett Nelson
Assistant Regional Counsel
U.S. Environmental Protection Agency
230 S. Dearborn Street
Chicago, Illinois 60604
(312) 886-7951

Chicago, Illinois
June 27, 1986

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION V

IN THE MATTER OF:	)	
	)	
GRADY MCCAULEY CREATIVE GRAPHICS, INC.	)	DOCKET NO. V-W-85-R-35
	)	
	)	CERTIFICATE OF SERVICE
	)	

I hereby certify that on the date indicated below a copy of the foregoing motion for extension of time in which to file the prehearing exchange was personally served on the following individual:

Beverely Shorty
Regional Hearing Clerk
U.S. EPA, Region V
230 South Dearborn Street
Chicago, Illinois 60604

and was caused to be served via first class certified mail on the following individuals:

Kenneth Moore, Esq.
Squire, Sanders, & Dempsey
1800 Huntington Building
Cleveland, Ohio 44115

Honorable Spencer T. Nissen
Office of Administrative Law Judges
U.S. EPA (Mail Code A-110)
401 M Street, S.W.
Washington, D.C. 20460

DATED June 27, 1985

BY T. Leverett Nelson

T. Leverett Nelson
Assistant Regional Counsel
U.S. EPA, Region V
230 S. Dearborn Street
Chicago, Illinois 60604
(312) 886-7951

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION V

IN THE MATTER OF:	)	
	)	
GRADY MCCAULEY CREATIVE GRAPHICS, INC.	)	DOCKET NO. V-W-85-R-35
	)	
	)	ORDER
	)	

Order Granting Extension of Time

Counsel for Complainant having by letter, dated June 27, 1986, requested an extension of the date for filing the prehearing exchange as directed in the ALJ's letter, dated May 2, 1985, for the reason that certain documents essential to the filing of the prehearing exchange are presently unavailable, and other good cause shown, the time for filing the prehearing exchange is extended to and including July 11, 1986.

Dated this _____ day of July 1986.

Spencer T. Nissen
Administrative Law Judge

Squire, Sanders & Dempsey

Counsellors at Law
1800 Huntington Building
Cleveland, Ohio 44115

Additional Offices:
Brussels, Belgium
Columbus, Ohio
Miami, Florida
New York, New York
Phoenix, Arizona
Washington, D.C.

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Telecopier 1 (216) 687-8777
Telecopier 2 (216) 687-8780

Direct Dial Number
(216) 687-8571

June 24, 1986

FEDERAL EXPRESS

T. Leverett Nelson, Esq.
Assistant Regional Counsel
U.S. EPA Region V
230 S. Dearborn St., 5C-16
Chicago, Illinois 60604

Re: In Re Grady McCauley Creative Graphics Inc.
Case No. V-W-85 R-35

Dear Counselor:

The parties have made enormous progress in settlement discussions resolving almost all of the issues. As explained more fully below, only two issues remain to be settled. The resolution of these issues requires a quiet and unhurried examination of the facts of this case in light of applicable principles and possibly consultation with other Agency personnel. Accordingly, I believe that you will find it more helpful to have Grady McCauley's position in writing than to try to address these issues initially during a telephone conversation. Nonetheless, although we have exchanged telephone call slips, I apologize for the difficulty in reaching me by phone. I have had several unexpected emergencies in my practice which have taken all of my time and have repeatedly required my presence out of the office where I did not have access to the rather thick file on this case. I completed most of the analysis underlying this letter on plane flights and am dictating this letter on a beautiful June Saturday afternoon. I apologize for not getting these materials to you sooner and for any inconvenience which you or Paul may have suffered.

Like most compromises, the current draft of the Consent Agreement and Final Order (CAFO) contains provisions which Grady McCauley does not like, for example, the requirement for financial assurance. Similarly, the latest draft of the CAFO omits provisions, such as an express force majeure clause, which Grady McCauley wanted to have. However, the parties have worked through these and other issues by identifying mutually acceptable "middle ground," for example, limiting the closure requirement to the dry

wells themselves, thus making it possible for Dennis Grady and Dave McCauley to obtain financial assurance for an expense which can be estimated, and the assurances which you and Paul gave to Dennis and me at our meeting in your offices in Chicago on the Agency's practice of amending time schedules in the face of events truly beyond the reasonable control of the CAFO recipient. I am optimistic that the same kind of effort which has brought us this far will enable us to resolve the remaining two issues.

I.
ISSUES RESOLVED

At the outset, it is important to state formally that Grady McCauley accepts, as a compromise, the resolution which is reflected in your March 28, 1986 version of the Consent Agreement and Final Order for all issues except the two discussed below. Thus, if we can achieve a reasonable resolution of these two points, this litigation can be speedily concluded.

II.
APPROVAL OF SAMPLING PLAN

As you and Paul know from my Federal Express package of May 30, and my earlier telephone conversations with each of you, Dennis Grady and Dave McCauley are anxious to begin sampling work. As you may recall, Grady McCauley has already completed a substantial amount of sampling and has already submitted the results in a fat report by Wadsworth Testing Laboratories. For the reasons set forth in my letter to you of May 30 and our prior conversations, Grady McCauley would like to have written approval of its final Sampling Plan from both Ohio EPA and U.S. EPA as soon as possible.

Grady McCauley's final Sampling Plan -- unlike the draft sampling plan available to you when you drafted the latest version of the Consent Agreement and Final Order -- provides for a second ninety-day Phase II study covering the installation of additional groundwater monitoring wells and soil sampling. Accordingly, a minor amendment to paragraph No. 2 on p. 3 of your latest version of the Consent Agreement and Final Order needs to be made. The language in the sentence in paragraph No. 2 in the CAFO assumed that the Sampling Plan would have to be amended to provide for the Phase II activities. However, since Grady McCauley's final Sampling Plan has already been amended to provide expressly for Phase II, this sentence should be deleted. When Paul Dimock called me to inquire about the status of the case, he explained that the

purpose behind the last sentence in paragraph No. 2 was to address the Phase II activities which might be required depending on the results of Phase I. Paul's explanation was very important to us because we had been concerned that the language could be read to impose an open ended obligation on Grady McCauley.

For your convenience, I am setting forth below the language in paragraph No. 2 with the proposed deletion indicated.

> 2. Respondent has submitted to the Ohio Environmental Protection Agency (OEPA) and U.S. EPA, and OEPA and U.S. EPA have approved, a Sampling Plan to identify the extent of soil and groundwater contamination at the facility. This plan includes but is not limited to the installation of a groundwater monitoring system and soil sampling. ~~The plan shall also contain provisions for additional groundwater monitoring and/or soil sampling to further define the area of contamination if required.~~

Thus, by deleting one sentence from the latest version of the CAFO, all nonmonetary language issues will be resolved.

III.
STIPULATED CIVIL PENALTY TO BE PAID UPON EXECUTION

A. U.S. EPA Initial Proposed Penalty of $9,500 Based on Penalty Assessment Matrix and Pre-Complaint Information

Before U.S. EPA had available to it the information which is set forth below, it "propose[d]" a civil penalty of $9,500. See U.S. EPA's initial Complaint, Findings of Violation, and Compliance Order, p. 7.

U.S. EPA's May 8, 1984 Final RCRA Civil Penalty Policy contains a Penalty Assessment "Matrix" or box chart shown on pages 4 and 10. The horizontal axis of this Matrix or box chart is labelled "Extent of Deviation from Requirement" and the vertical axis is labelled "Potential for Harm." Each of these axes is subdivided into three categories: major, moderate, and minor. Thus, the Matrix or box chart has nine boxes reflecting the various combinations of major, moderate, and minor for each of the two factors "Extent of Deviation from Requirement" and "Potential for Harm." The only box which contains a dollar range covering $9,500

reflects a "major" assignment for "Extent of Deviation from Requirement" and a "moderate" assignment for "Potential for Harm." Indeed, $9,500 is the mid-point value for this box.

For litigation purposes, Grady McCauley does not accept the RCRA Civil Penalty Policy as a lawful and appropriate expression of Congressional policy in Section 3008 of RCRA, 42 U.S.C. §6928, as opposed to non-statutory Agency policy. Nor does Grady McCauley believe that its case has been correctly placed within the Matrix box chart of the RCRA Civil Penalty Policy. Nonetheless, for settlement purposes, Grady McCauley will present its contentions within the framework of the RCRA Civil Penalty Policy.

B. Changing Grady McCauley's Placement within the Penalty Assessment Matrix Based on New Information on the Extent of Deviation from Requirements Since Grady McCauley Implemented "Some" If Not "Most" of the RCRA Requirements for Small Generator Status

As explained above, U.S. EPA's initial proposed penalty of $9,500 is the result of the Agency's "moderate" assignment for "potential for harm" and "major" assignment for "extent of deviation from requirements." The initial determination that Grady McCauley had a "major" deviation from the RCRA requirements is the most important factor in producing the Agency's high initial proposed penalty of $9,500. Without changing that "major" categorization, the penalty can still be reduced to $8,000. While assignment to a different box within the Penalty Assessment Matrix would be appropriate for the reasons discussed below, a reduction from $9,500 to $8,000 is certainly the minimum appropriate in light of the facts of this case. This $1,500 reduction is wholly within your power under the RCRA Civil Penalty Policy based on your front line responsibility for enforcement. U.S. EPA's RCRA Civil Penalty Policy provides (p. 10):

> The selection of the exact penalty amount within each cell [of the penalty assessment matrix] is left to the discretion of compliance/ enforcement personnel in any given case.

As the person at U.S. EPA most familiar with the facts of Dennis Grady's and Dave McCauley's sign business, you are in the best position to make a proper exercise of discretion. For the reasons described below, you should reduce the initial penalty amount by

$1,500 from $9,500 to $8,000, even if you do not change the "box" to which Grady McCauley is assigned within the Penalty Assessment Matrix.

U.S. EPA's RCRA Civil Penalty Policy discusses the distinction between major, moderate, and minor deviations from RCRA requirements on pages 8-9. The RCRA Civil Penalty Policy explains that a "moderate" violation means that the company "significantly deviates from the requirements of the regulation or statute but some of the requirements are implemented as intended." p. 9 (emphasis supplied.) Further, the RCRA Civil Penalty Policy explains that a "minor" designation means that the company "deviates somewhat from the regulatory or statutory requirements but most of the requirements are met." p. 9 (emphasis supplied.) Thus, the question is whether Grady McCauley had a "minor" deviation because "most of the requirements are met," or a "moderate" deviation because, notwithstanding "significan[t] devia[tion]," "some of the requirements are implemented as intended," or whether Grady McCauley had a "major" deviation because it "totally disregarded the requirement" (p. 8).

As you know, all of the "paperwork" violations charged in U.S. EPA's Complaint are inapplicable if Grady McCauley qualifies as a small volume generator under 40 C.F.R. Section 261.5. (If you have any questions regarding this conclusion, please call and I will be happy to give you the citations in the RCRA regulations which exempt small volume generators from the violations charged.)

While U.S. EPA has not yet accepted that Grady McCauley is entitled to treatment as a small volume generator, certainly there should be no argument that Grady McCauley has met "some of the requirements" for a small volume generator. U.S. EPA's RCRA Civil Penalty Policy provides (p. 9) that when "some of the requirements are implemented," there has only been a "moderate" deviation from requirements. Indeed, since Grady McCauley can fairly be said to have met "most of the requirements" for a small volume generator, a "minor" designation would be appropriate for the factor "deviation from requirements."

Certainly the key requirement for small generator status is the amount of hazardous waste generated in a month. The requirements for small generator status are set forth in 40 C.F.R. Section 261.5 which provides in the very first sentence in paragraph (a) that:

> (a) A generator is a small quantity generator in a calendar month if he generates less than 1,000 kilograms of hazardous waste in that month.

There is no question that Grady McCauley generated substantially less than 1,000 kilograms of hazardous waste in any month. Indeed, even applying conservative assumptions, Grady McCauley would at worst only generate about 1/2 that amount.

The dry wells which Grady McCauley inherited from its predecessor Dice Decal operated in the real world like tanks. Further, Humbolt Sanitary Service removed Grady McCauley's hazardous waste along with its sanitary waste.

If you were to determine that Grady McCauley had only a "minor" deviation from the requirements for small generator status, under the Penalty Assessment Matrix on pp. 4 and 10 of the RCRA Civil Penalty Policy, an initial penalty from $3,000 to $4,099, (midpoint - $4,000), would be authorized (given U.S. EPA's previous designation of "moderate" for "potential for harm" which Grady McCauley is not now addressing). Similiarly, if you were to determine that Grady McCauley had a "moderate" deviation from the requirements for small generator status, under the Penalty Assessment Matrix, a penalty from $5,000 to $7,999 (midpoint - $6,500) would be authorized. Even if you should decide that Grady McCauley had a "major" deviation from the requirements for small generator status, an $8,000 penalty would be appropriate, given the small generator requirements which have been met.

Reduction in the initial penalty assignment within the Penalty Assessment Matrix would be consistent with the complete absence of contamination detected in off-site wells and in all on-site wells except those drilled right next to the dry wells. Even these wells have contaminant levels that are extraordinarily small. For example, in reviewing the file on this case, I noted Dave McCauley's letter to Ohio EPA on November 23, 1984 reporting the first water sampling results in this case. These results were contained in Wadsworth Testing Laboratories' November 21, 1984 VOC analysis which showed 39 ug/l for ethyl benzene and 140 ug/l for xylenes. As you know, this is 39 parts per billion for ethyl benzene and 140 parts per billion for xylenes. Almost exactly one year later, U.S. EPA proposed at 50 Fed. Reg. 47022 (November 13, 1985) a Recommended Maximum Contaminant Level (RMCL) under the Safe Drinking Water Act of 680 ug/l for ethyl benzene and 440 ug/l for xylenes. In other words, U.S. EPA has proposed that major drinking water systems, like Chicago's, may have levels of ethyl benzene at

the tap more than 17 times as high as those found in Grady McCauley's water and may have levels of xylenes more than 3 times as high as those found in Grady McCauley's water. As you may recall, Wadsworth Testing Laboratory's November 21, 1984 Report showed that the lab had not detected any other volatile compounds in Grady McCauley's water.

In short, it is fair to conclude that there has been an overreaction to the miniscule amounts of contamination at Grady McCauley. Certainly a reduction in the initial penalty amount assigned to Grady McCauley under the Penalty Assessment Matrix would more fairly place Grady McCauley vis-a-vis all other small volume generators in the United States which may have a RCRA violation since it can hardly be said that Grady McCauley has, as compared to all others, a "major" deviation from the requirements.

C. Adjustment Factors - Based on New Information Not considered Before Setting the Proposed Penalty Amount in the Complaint, Reductions for Good Faith, Promptness, Lack of Willfulness and Negligence, and Other Unique Factors Should be Made

Under the RCRA Civil Penalty Policy, now is an appropriate time for U.S. EPA to consider adjustments to the initial penalty calculated under the Penalty Assessment Matrix. U.S. EPA's RCRA Civil Penalty Policy provides in Section III entitled "Summary of the Policy" on pp. 4-5 that:

> After determining the appropriate penalty based on gravity and, where appropriate, economic benefit, the penalty may be adjusted upwards or downward to reflect particular circumstances surrounding the violation. The factors that should be considered are:
>
> Good faith efforts to comply/lack of good faith;
>
> Degree of willfulness and/or negligence;
>
> History of noncompliance;
>
> Ability to pay; or
>
> Other unique factors.

> These factors (with the exception of factors which increase the penalty such as history of noncompliance) generally will be considered after proposing the penalty in the complaint, i.e., during the settlement stage.

Thus, after the initial penalty amount has been proposed in the Complaint, adjustment factors such as good faith, promptness, and lack of negligence should be considered during settlement discussions.

1. Reduction for Good Faith

A.

Grady McCauley is entitled to a substantial reduction in the initial penalty for its good faith efforts to comply. Grady McCauley believed in good faith that it succeeded to the small generator exemption enjoyed by its predecessor Dice Decal. Indeed, as you may recall, Dice Decal wrote to U.S. EPA on June 22, 1980 explaining that the business fell within the small generator exception. A copy of this letter was handed to U.S. EPA at the time of the November 20, 1980 site visit. Thus, there is strong contemporaneous evidence of the reliance on small generator status.

Although U.S. EPA had first-hand knowledge in November 1980 of Grady McCauley's system for handling the wash water and cleaning agents from its screens, at no time prior to the Complaint did U.S. EPA say anything to Grady McCauley orally or in writing which would call into question their good faith reliance that they were a small volume generator in compliance with RCRA.

B.

Indeed, Grady McCauley not only relied in good faith on their status as a small volume generator, they also believed in good faith that their waste was not hazardous. Grady McCauley thought that the use of biodegradable cleaning agents from Intercontinental Chemical Corporation (ICC) in screen washing avoided any environmental problems. Grady McCauley's good faith reliance was increased by the apparent satisfaction and lack of

objection by a U.S. EPA Region V chemical engineer who participated in a three-way call on ICC's biodegradable cleaning agents with ICC's Director of Technology on November 20, 1980 during a visit to Grady McCauley's business.

In short, on two different and independent grounds, Grady McCauley had a good faith belief that their business was in compliance with law. Strong evidence of this good faith is the fact that it was communicated to U.S. EPA five months before the RCRA regulations became applicable and five years before U.S. EPA's Complaint.

C.

In assessing Grady McCauley's good faith effort to comply, it is important to remember that Dennis Grady and Dave McCauley took over the business on September 1, 1983. They had been running the business less than six months at the time of Ohio EPA's initial inspection on February 9, 1984. Dennis and Dave relied in good faith on Dice Decal's claim for small generator status and on the ICC biodegradable cleaning agents. Certainly Dennis and Dave should not be treated the same as a company which had occasion to make a careful examination of its waste practices in 1980 in light of the new RCRA requirements. Dennis Grady and Dave McCauley had no reason to believe that carrying on the practices of their predecessor would not comply with law. Moreover, Dennis and Dave did not have a long time during which it might be reasonable for them to reexamine their handling of the waste water from the cleaning of screens. The determination that there might be RCRA problems at Grady McCauley's Middlebranch Road site was made during the initial months after Dennis and Dave had taken over the business and while they were consumed with all of the problems of running a new enterprise.

D.

Long before U.S. EPA's RCRA Complaint (more than 1/2 year) and without any order from Ohio EPA, Grady McCauley brought bottled water into the plant. As noted above, approximately one year later U.S. EPA proposed Safe Drinking Water Act Recommended Maximum Contaminant Levels (RMCL) which showed that Grady McCauley's action was unnecessary. Nonetheless, the speed with which Grady McCauley acted and the action itself both are strong evidence of their good faith efforts to comply with the purposes of the environmental laws.

E.

The record of Grady McCauley's actions before U.S. EPA filed its Complaint is strong evidence of its good faith. A review of the steps taken more than 1/2 year before U.S. EPA enforcement shows the good faith of this small business in acting promptly and cooperatively with Ohio EPA.

TIME LINE SHOWING
GRADY McCAULEY'S PROMPT AND
COOPERATIVE ACTION BEFORE
U.S. EPA ENFORCEMENT

Date	Description
8/24/84	OEPA's first letter requesting two soil borings within three feet of the dry wells and analysis of soil samples at 5 and 8 feet.
10/23/84	Dave McCauley's letter to OEPA transmitting Wadsworth Testing Laboratories' VOC analysis of the soil samples.
11/23/84	Dave McCauley's letter to Ohio EPA volunteering Wadsworth Testing Laboratories' November 21, 1984 VOC analysis of the water supply (which turned out to be 1/3 the Recommended Maximum Contaminant Level (RMCL) for Xylenes and 1/17 the RMCL for ethyl benzene under U.S. EPA's proposed Safe Drinking Water Act standards).
12/05/84	Meeting between OEPA and Grady McCauley.
12/07/84	Grady McCauley telephones Ohio EPA to advise that it has tested all neighboring water wells for possible contamination and has found no contamination.
12/10/84	OEPA's letter to Dave McCauley summarizing the December 5 meeting, confirming OEPA's request that immediate area water wells be tested (which had occurred before the letter was sent out) and confirming OEPA's request for an investigation of the extent of contamination.

12/12/84 Dennis Grady's letter to OEPA confirming in writing the testing and absence of contamination in neighboring water wells, advising Ohio EPA that Wadsworth Testing Laboratories and Ohio Drilling Company had been retained, and that a survey of the property was planned that week to determine the location of test borings.

12/13/84 Dennis Grady's letter to OEPA forwarding Wadsworth Testing Laboratories' test report on the neighboring water wells showing no contamination.

12/26/84 Wadsworth Testing Laboratories completes its "Ground Water Assessment Proposal."

01/10/85 OEPA letter to Dave McCauley thanking him for the Wadsworth Testing Laboratories' Ground Water Assessment Proposal, providing "several comments," and noting that "[o]ur review of the proposal finds it to be generally satisfactory, and we have no objection to initiation of the assessment as proposed."

06/10/85 Meeting between OEPA and Grady McCauley at which OEPA requested an additional round of groundwater sampling.

06/28/85 U.S. EPA RCRA Complaint filed.

08/14/85 Grady McCauley presents Wadsworth Testing Laboratories' final Report to U.S. EPA at a meeting in Chicago.

08/15/85 Grady McCauley transmits Wadsworth Testing Laboratories' final Report to OEPA.

August '85 Grady McCauley screen washing operation moved from Middlebranch Road site to North Canton where disposal is to a publicly owned treatment works.

In litigation, Grady McCauley will contend that U.S. EPA interfered with a cooperative program between Grady McCauley and Ohio EPA. Grady McCauley will also argue that U.S. EPA's requirement for yet another Sampling Plan resulted in substantial addi-

tional expense, delay, and duplication. However, at the present time and for settlement purposes, Grady McCauley is submitting the above time line to demonstrate its good faith and promptness prior to U.S. EPA enforcement.

2. Absence of Willfulness and Negligence

U.S. EPA's RCRA Civil Penalty Policy provides expressly for reductions in the initial civil penalty when there is a lack of willfulness and/or negligence. The RCRA Civil Penalty Policy states that (p. 17): "Although RCRA is a strict liability statute, there may be instances where penalty mitigation may be justified based on the lack of willfulness and/or negligence." On the facts of this case, a substantial reduction in the penalty is warranted because of Grady McCauley's lack of willfulness and negligence.

A.

As noted above, Grady McCauley did not willfully violate the RCRA regulations. On the contrary, Grady McCauley believed that its continuation of its predecessor's practices and equipment for handling washwater from screen cleaning and its use of biodegradable cleaning agents from Intercontinental Chemical Corporation (ICC) eliminated environmental problems. Dennis Grady and Dave McCauley, who are businessmen, can hardly be judged negligent in believing that the company's status as a small volume generator and its ICC cleaning agents kept it in compliance with law when a U.S. EPA Region V chemical engineer reached the same conclusion after personally inspecting the waste handling system and practices and listening first-hand to ICC's Director of Technology during a 3-way call about the biodegradable cleaning agents. The absence of any suggestion that there were problems after an on-site review of Grady McCauley's waste disposal practices by the U.S. EPA Region V chemical engineer and by U.S. EPA consultants from Ecology & Environment, Inc. (who were presented as international specialists in the environmental sciences) helps support the conclusion that Dennis Grady and Dave McCauley were not negligent.

B.

U.S. EPA's RCRA Civil Penalty Policy provides that: (p. 18) "[i]n assessing the degree of willfulness and/or negligence" U.S. EPA should consider "how much control the violator had over

the events constituting the violation." Grady McCauley did not install the dry wells which are at the heart of this case. Its predecessor Dice Decal did. Grady McCauley had had "control" over the business, including screen washing, for less than six months when Ohio EPA's first inspection took place. Dennis Grady and Dave McCauley did not have "control" in 1980 when businesses had occasion to review carefully the new RCRA requirements and to conform their waste management practices to the new requirements of law.

C.

U.S. EPA's RCRA Civil Penalty Policy also provides that "[i]n assessing the degree of willfulness and/or negligence" U.S. EPA should consider "whether the violator took reasonable precautions against the events constituting the violation." Among the precautions taken in this case were the use of ICC's biodegradable cleaning agents in the screen washing and the June 22, 1980 letter to U.S. EPA advising the Agency of the claim for small generator status.

D.

U.S. EPA's RCRA Civil Penalty Policy provides that: (p. 18) "[i]n assessing the degree of willfulness and/or negligence" U.S. EPA should consider "whether the violator knew or should have known of the hazards associated with the conduct." Grady McCauley is a small business which is most accurately described as a partnership between Dennis Grady and Dave McCauley in corporate form. Grady McCauley did not know of the "hazards" (if that is the right word) associated with its screen cleaning. This small business does not have toxicologists or environmental specialists on its staff. Grady McCauley believed that the ICC biodegradable cleaning agents avoided environmental "hazards." Dennis Grady and Dave McCauley should not be held to a higher standard of knowledge than U.S. EPA Region V chemical engineers and consultants from Ecology & Environment.

3. Other Unique Factors

U.S. EPA's RCRA Civil Penalty Policy provides expressly for reductions in the initial penalty amount for reasons other than the four enumerated adjustment factors (p. 20). Reductions are

authorized for "factors which might arise on a case-by-case basis" (p. 20). In the present case, a substantial reduction is justified because of several unique factors in this case.

A.

When U.S. EPA issued its RCRA Complaint, Ohio had interim authorization. U.S. EPA may enforce hazardous waste regulations in states with authorized programs only when the State, after notice, has failed to act adequately to deal with the alleged violation. See RCRA Section 3008(A)(1) and (2), House Committee on Interstate and Foreign Commerce Report No. 94-1461 (Sept. 9, 1976) p. 31. Cf. Report of Senate Committee on Public Works, No. 94-988 (June 25, 1976) p. 17; United States v. Cargill, 508 F. Supp. 734 (D.Del. 1981); U.S. EPA March 15, 1982 Memorandum to All Regional Administrators and Regional Counsels, p. 3.

In the present case, as the time line set forth above makes dramatically clear, Ohio EPA was handling any RCRA problems at Grady McCauley's Middlebranch Road site more than adequately. U.S. EPA's enforcement led to interference with Ohio EPA's primary responsibilities under RCRA, delay, duplication, and added expense.

B.

There is a second contention which Grady McCauley will raise in litigation which affects U.S. EPA's probability of success on the merits. This second argument also warrants a reduction in the proposed penalty in the context of settlement negotiations under U.S. EPA's RCRA Civil Penalty Policy.

U.S. EPA's delay in giving notice that the ICC biodegradable cleaning agents were not a complete solution and that the dry wells would have to be removed or decontaminated caused Grady McCauley substantial prejudice warranting a major reduction in the proposed penalty. If U.S. EPA had made its views known on November 20, 1980 when it inspected the screen washing operation, or indeed had made its views known during the 2 3/4 years thereafter, Dennis Grady and Dave McCauley would not be the subject of an enforcement action. U.S. EPA knew in November 1980 the kind of cleaning agents used by the business and knew that the screen washings went to dry wells. If the Agency had commenced enforcement then, or within 2 3/4 years thereafter, Dennis Grady and Dave McCauley would have taken over a business without environmental problems.

The Courts have barred government enforcement actions in cases like Grady McCauley's or have ruled that substantially reduced penalties are required. See e.g., Moser v. United States, 341 U.S. 41 at 46 (1951), United States v. Bailey, 467 F. Supp. 925 (D.Ark. 1979), Roberts v. United States, 357 F.2d 938, 946 (Ct. claims 1966), United States v. American Greetings Corp., 168 F. Supp. 45 (N.D.Ohio 1958), aff'd. 272 F.2d 945 (6th Cir. 1959) (FTC's knowledgeable failure to object to defendant Card Manufacturer's practice of remounting its competitor's cards for display on its own blanked-out mounts for four years "impels the court to assess only a nominal penalty," 168 F. Supp. at 50), American Home Products v. Finch, 303 F. Supp. 488 (D.Del. 1969) (Drug company's reliance upon long-standing FDA approval of its product excused it from failure to perform new clinical tests.), Dana Corp. v. United States, 470 F.2d 1032, 1045 (Ct. claims 1972) ("The Government is estopped from denying the actions of its agents within the scope of their authority and which are relied upon by others to their detriment."), Air Pollution Variance Board v. Western Alfalfa, 553 p.2d 811 (Colo. 1976) (Governmental delay following environmental inspection.), United States v. Lazy FC Ranch, 481 F.2d 985 (9th Cir. 1973) (Government failed to apprise private parties that arrangement was improper.)

Grady McCauley presents the contentions set forth above in the hope that you will review them during the settlement negotiations more as a judge than as an advocate. Of course, even in your perspective as an advocate, U.S. EPA's RCRA Civil Penalty Policy allows you to take account of the effect of Grady McCauley's arguments in assessing probability of success on the merits. In your role of determining what is a fair penalty, Grady McCauley believes that you will see that it is just that a substantial reduction in the penalty be made under the special facts of this case.

IV.
CALCULATING THE FINAL PENALTY

The first step in determining the correct penalty for Grady McCauley is deciding an appropriate and fair initial penalty under the Penalty Assessment Matrix. As explained above, this presents the questions whether the $9,500 penalty should be reduced to $8,000 (without changing the determination that there was a "major" deviation from requirements), or should be reduced to a range of $5,000 to $7,999 (midpoint $6,500) if you decide that Grady McCauley implemented "some of the requirements" for small

generator status and thus had only a "moderate" deviation from the requirements for small generator status, or should be reduced to a range of $3,000 to $4,999 (midpoint $4,000) if you believe that Grady McCauley had implemented "most of the requirements" for small generator status and thus had only a "minor" deviation from the requirements for small generator status. In making this determination, the new evidence which has come to the Agency's attention since the Complaint was drafted and which is summarized in this letter and in Grady McCauley's Answer should be carefully considered.

U.S. EPA's RCRA Civil Penalty Policy authorizes a reduction of up to 40% of the initial penalty amount based on Grady McCauley's good faith (p. 17), a second and independent reduction of up to 40% is authorized for Grady McCauley's lack of willfulness and/or negligence (p. 18), and a third independent reduction of up to 40% is authorized for the unique factors in Grady McCauley's case (p. 21). Since each of these 40% factors is applied to the same base, i.e., the initial penalty amount, the result of making the maximum reduction for each of the three factors would be a zero dollar penalty. As you know, "compliance/ enforcement personnel have discretion" to make reductions of up to 25% of the initial penalty amount for each of the three factors (pp. 17, 18, and 21). To illustrate one of several different ways in which a fair settlement figure could be achieved, if you were to use your discretion to reduce the initial penalty amount to $8,000 within the Penalty Assessment Matrix and were to apply your discretion to reduce the penalty by 25% for each of the three adjustment factors, it would result in a penalty of $2,000. While Grady McCauley believes that it is entitled to a greater reduction, it is prepared to settle the case by paying $2,000.00.

As you can see, U.S. EPA's RCRA Civil Penalty Policy requires the consideration of factors which are best set forth in writing because of their complexity and length. The Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties sets forth U.S. EPA's settlement policy at 40 C.F.R. Section 22.18:

> (a) Settlement Policy. The Agency encourages settlement of a proceeding at any time if the settlement is consistent with the provisions and objectives of the Act and applicable regulations. (emphasis supplied.)

Grady McCauley's stance from the very beginning of this matter with Ohio EPA and thereafter with U.S. EPA has been to work cooperatively with the governments. Grady McCauley is optimistic that the parties will be able to resolve the remaining two issues of approval of the final Sampling Plan and reducing the amount of the stipulated civil penalty. I look forward to discussing this case with you at your earliest convenience.

Sincerely yours,

Kenneth C. Moore

/eaw
cc: Paul Dimock

JUN 06 1986

5CS-16

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Honorable Spencer T. Nissen
Office of Administrative Law Judges
Mail Code A-110
U.S. Environmental Protection Agency
401 M. Street, S.W.
Washington, D.C. 20460

RE: Grady McCauley Creative Graphics, Inc.
Docket No. V-W-85-R-35

Dear Judge Nissen:

Pursuant to your Order dated May 2, 1986, counsel for Complainant encloses a Status Report regarding the above-referenced case.

Thank you very much.

Sincerely,

T. Leverett Nelson
Assistant Regional Counsel

cc: Kenneth C. Moore, Esq.
Attorney for Respondent

Beverely Shorty
Regional Hearing Clerk

EPA:RC:CWERB:RNELSON:Desiree':6/6/86:DISK#7

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION V

IN THE MATTER OF:	)	
	)	
	)	
GRADY MCCAULEY CREATIVE GRAPHICS, INC.	)	Docket No. V-W-85-R-35
	)	
Respondent	)	

STATUS REPORT

Pursuant to Administrative Law Judge Spencer T. Nissen's Order of May 2, 1986, the Complainant, U.S. Environmental Protection Agency, by and through its attorney, hereby files this report on the status of negotiations in the above-captioned case:

1. The parties have met twice for informal settlement conferences, on August 14, 1985, and on March 11, 1986.

2. Based on these meetings as well as subsequent conversations by telephone, counsel for Complainant sent a draft Consent Agreement and Final Order (CAFO) to counsel for Respondent on March 28, 1986. The parties are still negotiating portions of the CAFO.

3. If settlement is not reached in the very near future, counsel for Complainant fully intends to proceed with the prehearing exchange, currently set for June 27, 1986.

Respectfully submitted,

T. Leverett Nelson

T. Leverett Nelson
Assistant Regional Counsel
U.S. Environmental Protection Agency
230 S. Dearborn 16th Fl.
Chicago, Illinois 60604
(312) 353-2094

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION V

IN THE MATTER OF:	)	
	)	DOCKET NO. V-W-85-R-35
GRADY MCCAULEY CREATIVE GRAPHICS, INC.	)	
7390 MIDDLEBRANCH ROAD	)	CERTIFICATE OF SERVICE
MIDDLEBRANCH, OHIO 44652	)	

I hereby certify that on the date indicated below a copy of the foregoing Status Report was personally served on the following individual:

Beverely Shorty
Regional Hearing Clerk
U.S. EPA, Region V
230 South Dearborn Street
Chicago, Illinois 60604

and was caused to be served via first class certified mail on the following individuals:

Kenneth Moore, Esq.
Squire, Sanders & Dempsey
1800 Huntington Building
Cleveland, Ohio 44115

Honorable Spencer T. Nissen
Office of Administrative Law Judges
U.S. EPA (Mail Code A-110)
401 M Street, S.W.
Washington, D.C. 20460

DATED June 5, 1986

BY T. Leverett Nelson
T. Leverett Nelson
Assistant Regional Counsel
U.S. EPA, Region V
230 S. Dearborn Street
Chicago, Illinois 60604

MAY 7 1986

5CS-16

Honorable Spencer T. Nissen
Office of Administrative Law Judges
Mail Code A-110
U.S. Environmental Protection Agency
Washington, D.C. 20460

Re: Grady McCauley Creative Graphics, Inc.
Docket No. V-W-85-R-35

Dear Judge Nissen:

Please note that Pamela Rekar is no longer the attorney for the Complainant in the above-referenced case. Rather, I have been substituted as attorney for the Complainant.

Thank you very much.

Sincerely,

T. Leverett Nelson
Assistant Regional Counsel

cc: Kenneth C. Moore, Esq.
Attorney for Respondent

Beverely Shorty
Regional Hearing Clerk

EPA:RC:SWFRB:RNELSON:Desiree':Disk#6

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

Office of Administrative Law Judges

Mail Code A-110

May 2, 1986

OFFICE OF
THE ADMINISTRATOR

Kenneth C. Moore, Esq.
Squire, Sanders & Dempsey
1800 Huntington Building
Cleveland, Ohio 44115

Pamela Rekar, Esq.
Office of Regional Counsel
U.S. Environmental Protection Agency
Region V
230 South Dearborn Street
Chicago, Illinois 60604

Subject: Grady McCauley Creative Graphics, Inc.,
Docket No. V-W-85-R-35

Dear Counselors:

As you have previously been informed, the undersigned has been designated to preside at the subject proceeding under Section 3008 of the Solid Waste Disposal Act, as amended (42 U.S.C. 6928).

Section 22.18(a) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits (40 CFR Part 22) sets forth Agency policy concerning settlements and the parties may be attempting to settle this matter. Counsel for Complainant is directed to file a statement on or before June 6, 1986, as to whether this matter has been or will be settled. If this matter is not settled by that date, I propose to accomplish some of the purposes of a prehearing conference by this letter as permitted by Section 22.19(e) of the Rules of Practice.

Accordingly, the parties are directed to accomplish the following prehearing exchange:

By Complainant and Respondent

1. Furnish desired or required place for the hearing (see Sections 22.19(d) and 22.21(d) of the Rules of Practice).

2. To the extent not covered by specific requests below, furnish a list of expected witnesses, a summary of their anticipated testimony and a copy of each exhibit or document intended to be offered in evidence at the hearing.

By Complainant

1. Provide copies of report of inspection of Respondent's facility conducted by a representative of OEPA on February 9, 1984.

2. Provide copies of report of site visit by representatives of U.S. EPA on November 20, 1980, referred to in Paragraph 8 of answer.

3. Provide copies of notification, if any, to State of Ohio of violations alleged.

4. Does the fact that Interim Authorization for the State of Ohio to administer its hazardous waste program expired on January 31, 1986, effect Complainant's authority to enforce the Ohio Administrative Code? Explain answer.

5. Provide copies of delegations of authority authorizing Director, Waste Management Division to issue complaints such as the instant one.

6. Furnish summary of evidence supporting allegation that wastes stored in an underground tank were spent non-halogenated solvents (Nos. F003 and F005).

7. Provide copies of civil penalty calculation worksheets.

By Respondent

1. Provide copies of Dice Decal letter, dated July 22, 1980, referred to in Paragraph 5 of answer.

2. Provide evidence or estimates of quantities of hazardous waste generated by Respondent.

3. Furnish basis for statement that following the inspection of November 20, 1980, EPA was satisfied that there was not a hazardous waste problem at the mentioned site.

4. Furnish evidence of cooperative plan with Ohio EPA, provide copies of Ohio EPA letter, dated January 10, 1985, and copies of sampling results furnished to OEPA referred to in Paragraph 17 of answer.

5. Provide statement and evidence such as invoices of frequency Humboldt Sanitary Service pumped out dry wells.

6. Elaborate on contention proposed penalty is not in accordance with Final RCRA Civil Penalty Policy.

Responses to this letter will be furnished to the Regional Hearing Clerk, to the other party and to the undersigned on or before June 27, 1986.

Upon receipt and review of the responses, a determination will be made as to whether further correspondence would serve any useful purpose or whether this matter should be set for hearing without further delay.

Sincerely yours,

Spencer T. Nissen

Spencer T. Nissen
Administrative Law Judge

CERTIFICATE OF SERVICE

I hereby certify that the original of this Letter, dated May 2, 1986, in re: Grady McCauley Creative Graphics, Inc., was mailed to the Regional Hearing Clerk, Reg. V, and a copy was mailed to each addressee.

May 2, 1986

Helen F. Handon
Secretary

Nelsen

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of	)	
	)	
Grady McCauley Creative Graphics, Inc.,	)	Docket No. V-W-85-R-35
	)	
	)	
Respondent	)	

ORDER OF DESIGNATION

Administrative Law Judge Spencer T. Nissen, Environmental Protection Agency, Washington, D. C., is hereby designated as the Administrative Law Judge to preside in this proceeding under Section 3008 of the Solid Waste Disposal Act, as amended (42 U.S.C. 6928), pursuant to Section 22.21(a) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits (40 CFR 22.21(a)).

Edward B. Finch
Chief Administrative Law Judge

Dated: 4-21-86

Washington, D. C.

CERTIFICATION

I hereby certify that the original of this Order of Designation was mailed to the Regional Hearing Clerk, U.S. EPA, Region V, and copies were sent to Respondent and Complainant in this proceeding.

Dated: April 24, 1986

Leanne B. Boisvert
Legal Staff Assistant

216-994-9444

MAR 28 1986

5CS-16

Kenneth Moore, Esq.
Squire, Sanders, & Dempsey
1800 Huntington Building
Cleveland, Ohio 44115

RE: Grady McCauley Creative Graphics, Inc.
Docket No.: V-W-85-R-35

Dear Mr. Moore:

Please find enclosed the revised draft CAFO we discussed over the phone on March 24. U.S. EPA does not anticipate that any further changes will be necessary.

If the CAFO is acceptable, please have an authorized representative of Grady McCauley sign it and return it for signature by U.S. EPA. If you have any questions, please do not hesitate to call me at (312) 886-6852. Thank you.

Sincerely,

T. Leverett Nelson
Assistant Regional Counsel

Enclosure

bcc: Paul Dimock, 5HE-12

EPA:RC:SWERB:RNELSON:Desiree':3/27/86:DISK4

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION V

DATE: 3/20/86

SUBJECT: November 20, 1980 Inspection of Dice Decal Corporation, Middlebranch, Ohio

FROM: Rich Boice, CES R E Boice

TO: Paul Dimock, RES

Attached is the report for the above referenced inspection prepared by Ecology and Environment. In addition an internal Ecology and Environment memo dated October 30, 1981 is enclosed that provides a preliminary assessment of the potential for contaminating nearby residential wells.

The November 20, 1980 inspection of Dice Decal was part of what the U.S. EPA called the Akron, Canton, Youngstown Sweep. This sweep was well publicized and was meant to locate as many hazardous waste disposal problems as possible. We were especially interested in locating conditions that needed immediate action as a result of illegal dumping or storage of hazardous wastes.

Ecology and Environment, Inc. was responsible for conducting the inspections. Sites to be inspected were identified from U.S. EPA and State records and from complaints called in during the sweep. The call-in effort was organized by U.S. EPA. My role was to oversee and help evaluate Ecology and Environment's performance. To do this I participated in a number of the inspections including the inspection of Dice Decal.

During the sweep, Ecology and Environment, Inc. sent out a number of two-person teams to conduct the inspections. In addition to myself, sometimes employees from State and local pollution control agencies participated in the inspections. Each team conducted from two to five inspections per day. The inspections were unannounced and consisted of discussing conditions and operations with any company officials and property owners available at the site and a walk through or walk around inspection of the site. The reports generated from these inspections were based strictly on these walk through inspections, and the verbal information obtained. Obviously the evaluations from these inspections were preliminary and detailed evaluations of the subsurface hydrogeology and of contaminant attenuation were beyond the scope of the assignment.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION V

IN THE MATTER OF:	) Docket No. V-W-85 R-35
	)
	) Judge SPENCER T. NISSEN
Grady McCauley Creative Graphics, Inc.	)
7390 Middlebranch Road	) RESPONDENT GRADY McCAULEY'S
Middlebranch, Ohio 44652	) PREHEARING EXCHANGE
	) OF INFORMATION

Respondent Grady McCauley Creative Graphics, Inc. ("Grady McCauley") provides the following preliminary information in response to the May 2, 1986 Order for Prehearing Exchange:

By Complainant and Respondent

1. FURNISH DESIRED OR REQUIRED PLACE FOR THE HEARING (SEE SECTIONS 22.19(d) AND 22.21(d) OF THE RULES OF PRACTICE).

Grady McCauley requests that the hearing be held in the Canton area, Stark County, Ohio. This is "the county where Respondent resides or conducts the business which the hearing concerns" consistent with the primary location option set forth in 40 C.F.R. §22.19(d). This location will be most convenient to local witnesses for the hearing, and will partially mitigate Grady McCauley's incurrence of additional, unnecessary cost in this litigation.

2. TO THE EXTENT NOT COVERED BY SPECIFIC REQUESTS BELOW, FURNISH A LIST OF EXPECTED WITNESSES, A SUMMARY OF THEIR ANTICIPATED TESTIMONY AND A COPY OF EACH EXHIBIT OR DOCUMENT INTENDED TO BE OFFERED IN EVIDENCE AT THE HEARING.

Dennis Grady and Dave McCauley are the proprietors of the small business which is the Respondent in this case. They will testify about their business, screen washing at the Middlebrook Road site, the ICC biodegradable cleaning agents used, the handling of their waste, and the elimination of any further waste generation at the Middlebrook Road site after August 1985 when the business was moved to North Canton where wastewater goes to a POTW. They will testify on the elements for small generator status and other defenses summarized in the Answer, their cooperative actions with Ohio EPA set forth in detail in response to question No. 4 below, and the factors warranting a reduction in the penalty set forth at length in the response to question No. 6 below.

Frank Boinski is Grady McCauley's consultant in the matter and may testify on the technical aspects of the elements for small generator status and the absence of any hazard at the site.

Wadsworth Testing Laboratories is another consultant to Grady McCauley at the site and may testify to the facts and opinions in the Wadsworth Testing Laboratory reports produced as Exhibits in the prehearing exchange and technical elements of the defenses in Grady McCauley's Answer.

Robert Hattersley was the President of Dice Decal Corporation, the predecessor to Grady-McCauley. He may testify about the handling of wash water from screen cleaning, communications to U.S. EPA, and the absence of any warnings, cautions, or other response from U.S. EPA. He was the author of the July 22, 1984 letter to U.A. EPA notifying the government of the claim to small generator status (Exhibit 1). He may also testify about the November 20, 1980 visit by U.S. EPA to the Middlebrook Road site. (See Exhibit 2).

Richard E. Boice of U.S. EPA Region V, and Ellen J. Jurczak and Claude E. Mays III of U.S. EPA's Contractor Ecology & Environment, Inc., participated in U.S. EPA's inspection on November 20, 1980. One or more of these witnesses may be called to testify about the visit and related actions thereafter.

One or more witnesses from U.S. EPA may be called to testify to the facts summarized in defense VIII "BEAN COUNTING" and IX "SIGNATURE ON COMPLAINT".

If Complainant does not stipulate to the admissibility of any of the exhibits submitted in the prehearing exchange, Grady-McCauley reserves the right to call as witnesses the custodian of any business records and/or the author of any document.

B. Exhibits

In addition to Exhibits 1 through 23 which are covered by Grady-McCauley's responses to the question set forth below, Grady-McCauley may offer in evidence Exhibits 24, 25 and 26.

Exhibit 26 is a greatly reduced copy of a blueprint setting forth an aerial view of Grady-McCauley's Middlebrook Road site dated July 1985 and prepared for Wadsworth Testing Laboratories by the Environmental Design Group. This large blueprint has been previously shown to Complainant and is available for inspection. Grady-McCauley's witnesses may wish to refer to the blueprint during the hearing. Because of the size of the actual exhibit, Grady-McCauley is offering the reduced copy in this advanced exchange.

Grady-McCauley reserves the right to offer additional exhibits which may be obtained through further investigation and preparation of this case, for example, documents obtained from Complainant through informal requests or formal discovery pursuant to the Consolidated Rules of Practice, 40 CFR 22. 19(f), documents suggested by Complainant's documents submitted in the prehearing exchange, and documents which can be used in rebuttal to unanticipated evidence in Complainant's case-in-chief.

By Respondent

1. PROVIDE COPIES OF DICE DECAL LETTER, DATED JULY 22, 1980, REFERRED TO IN PARAGRAPH 5 OF ANSWER.

Please see Respondent's Exhibit 1.

2. PROVIDE EVIDENCE OR ESTIMATES OF QUANTITIES OF HAZARDOUS WASTE GENERATED BY RESPONDENT.

Grady McCauley estimates on the basis of conservative assumptions that it generated each month about one-half the 1,000 kilogram level established by 40 C.F.R. Section 261.5 for small generator status. This estimate is based on a high estimate of 160 gallons per month needed to replace the solvent used in screen washing, a ridiculously conservative (indeed false) assumption that no solvent evaporated (Contra Respondent's Exhibit 25), and an assumption that the solvent weighed 8 pounds per gallon. 160 gallons/month X 8 lbs/gallon = 1280 lbs/month. 1 kilogram = 2.2 lbs. 1280 divided by 2.2 581.82 kilograms. 1,000 kilograms allowed.

3. FURNISH BASIS FOR STATEMENT THAT FOLLOWING THE INSPECTION OF NOVEMBER 20, 1980, EPA WAS SATISFIED THAT THERE WAS NOT A HAZARDOUS WASTE PROBLEM AT THE MENTIONED SITE.

Please see Respondent's Exhibit 2, a memo prepared contemporaneously with U.S. EPA's November 20, 1985 visit.

4. FURNISH EVIDENCE OF COOPERATIVE PLAN WITH OHIO EPA, PROVIDE COPIES OF OHIO EPA LETTER, DATED JANUARY 10, 1985, AND COPIES OF SAMPLING RESULTS FURNISHED TO OEPA REFERRED TO IN PARAGRAPH 17 OF ANSWER.

COOPERATION WITH OHIO EPA
TIME LINE SHOWING
GRADY McCAULEY'S PROMPT AND
COOPERATIVE ACTION BEFORE
U.S. EPA ENFORCEMENT

Date	Respondent's Exhibit No.	Description
8/24/84	3	OEPA's first letter to Grady McCauley. This letter requested two soil borings within three feet of the dry wells and analysis of soil samples at 5 and 8 feet.
10/23/84	4	Dave McCauley's letter to OEPA transmitting Wadsworth Testing Laboratories' VOC analysis of the soil samples.

11/23/84	5	Dave McCauley's letter to Ohio EPA volunteering Wadsworth Testing Laboratories' November 21, 1984 VOC analysis of the water supply (which turned out to be 1/3 the Recommended Maximum Contaminant Level (RMCL) for Xylenes and 1/17 the RMCL for ethyl benzene under U.S. EPA's proposed Safe Drinking Water Act standards).
12/05/84	6	Meeting between OEPA and Grady McCauley.
12/07/84	7	Grady McCauley telephones Ohio EPA to advise that it has tested all neighboring water wells for possible contamination and has found no contamination.
12/10/84	6	OEPA's letter to Dave McCauley summarizing the December 5 meeting, confirming OEPA's request that immediate area water wells be tested (which had occurred before the letter was sent out) and confirming OEPA's request for an investigation of the extent of contamination.
12/12/84	7	Dennis Grady's letter to OEPA confirming in writing the testing and absence of contamination in neighboring water wells, advising Ohio EPA that Wadsworth Testing Laboratories and Ohio Drilling Company had been retained, and that a survey of the property was planned that week to determine the location of test borings.
12/13/84	8	Dennis Grady's letter to OEPA forwarding Wadsworth Testing Laboratories' December 11, 1984 "Volatile Compounds Analytical Report" showing no contamination in three offsite wells and 1 ug/l (1 part per billion of methylene chloride in two on site wells but no other VOCs detected. Methylene chloride is not purchased or used by Grady McCauley.

01/03/85	9	Dave McCauley's letter submitting Wadsworth Testing Laboratories December 26, 1984 "Groundwater Assessment Proposal" to Ohio EPA.
1/10/85	10	OEPA letter to Dave McCauley thanking him for the Wadsworth Testing Laboratories' Ground Water Assessment Proposal, providing "several comments," and noting that "[o]ur review of the proposal finds it to be generally satisfactory, and we have no objection to initiation of the assessment as proposed."
01/24/85	11	Dave McCauley's letter to Ohio EPA advising OEPA that he has issued a Purchase Order for groundwater assessment requested by agency and transmitting the January 22, 1985 letter of Dr. Marvin W. Stephens, Ph.D. of Wadsworth Testing Laboratories setting forth the resolution of several technical issues between Wadsworth Laboratories and Ohio EPA.
06/10/85	12	Meeting between OEPA and Grady McCauley at which OEPA requested an additional round of groundwater sampling.
06/14/85	12	Wadsworth Testing Laboratories letter to Grady-McCauley reporting on Wadsworth Testing Laboratories follow-up technical meeting with OEPA on June 10 on the technical content which OEPA wanted in Wadsworth's final report and forwarding to Grady McCauley OEPA's "August 28, 1984 State Version" of "GENERIC REMEDIAL INVESTIGATION/FEASIBILITY STUDY STATEMENT OF WORK" which was the basis of discussion at the technical meeting with OEPA. Wadsworth Testing Laboratories' letter advises that

		"ultimately the majority of the technical items requested in the 'Statement of Work' format will be required of you ."
06/28/85		U.S. EPA RCRA Complaint filed.
08/14/85	13 and 14	Grady McCauley presents Wadsworth Testing Laboratories' final Report to U.S. EPA at a meeting in Chicago.
08/15/85	13 and 14	Grady McCauley transmits Wadsworth Testing Laboratories' final Report to OEPA.
August '85		Grady McCauley screen washing operation moved from Middlebranch Road site to North Canton where disposal is to a publicly owned treatment works.

5. PROVIDE STATEMENT AND EVIDENCE SUCH AS INVOICES OF FREQUENCY HUMBOLDT SANITARY SERVICE PUMPED OUT DRY WELLS.

Humboldt Sanitary Service pumped out the dry wells approximately every 6 months in the period prior to governmental involvement. Please see Humboldt Sanitary Service's invoices which are Respondent's Exhibits 15, 16, 17, 18, 19, 20, 21, 22, and 23.

6. ELABORATE ON CONTENTION PROPOSED PENALTY IS NOT IN ACCORDANCE WITH FINAL RCRA CIVIL PENALTY POLICY.

A. U.S. EPA Initial Proposed Penalty of $9,500 Was Based on Pre-Complaint Information and Was Probably Based on the Penalty Assessment Matrix

Before U.S. EPA had available to it the information which is set forth below, it "propose[d]" a civil penalty of $9,500. See U.S. EPA's initial Complaint, Findings of Violation, and Compliance Order, p. 7.

U.S. EPA's May 8, 1984 Final RCRA Civil Penalty Policy contains a Penalty Assessment "Matrix" or box chart shown on pages 4 and 10. The horizontal axis of this Matrix or box chart is labelled "Extent of Deviation from Requirement" and the vertical axis is labelled "Potential for Harm." Each of these axes is subdivided into three categories: major, moderate, and minor. Thus, the Matrix or box chart has nine boxes reflecting the various combinations of major, moderate, and minor for each of the two factors "Extent of Deviation from Requirement" and "Potential for Harm." The only box which contains a dollar range covering $9,500 reflects a "major" assignment for "Extent of Deviation from Requirement" and a "moderate" assignment for "Potential for Harm." Indeed, $9,500 is the mid-point value for this box.

Grady McCauley does not accept the RCRA Civil Penalty Policy as a lawful and appropriate expression of Congressional

policy in Section 3008 of RCRA, 42 U.S.C. §6928, as opposed to non-statutory Agency policy. Nonetheless, while reserving its right to challenge the RCRA Civil Penalty Policy itself, in this prehearing exchange, Grady McCauley will present its contentions within the framework of the RCRA Civil Penalty Policy.

B. Grady McCauley's Placement within the Penalty Assessment Matrix Should Be Changed Based on New Information on the Extent of Deviation from Requirements Since Grady McCauley Implemented "Some" If Not "Most" of the RCRA Requirements for Small Generator Status

As explained above, U.S. EPA's initial proposed penalty of $9,500 is the result of the Agency's "moderate" assignment for "potential for harm" and "major" assignment for "extent of deviation from requirements." The initial determination that Grady McCauley had a "major" deviation from the RCRA requirements is the most important factor in producing the Agency's high initial proposed penalty of $9,500. Without changing that "major" categorization, the penalty can still be reduced to $8,000 within the same "box". While assignment to a different box within the Penalty Assessment Matrix would be appropriate for the reasons discussed below, a reduction from $9,500 to $8,000 is certainly the minimum appropriate in light of the facts of this case.

U.S. EPA's RCRA Civil Penalty Policy discusses the distinction between major, moderate, and minor deviations from RCRA requirements on pages 8-9. The RCRA Civil Penalty Policy explains that a "moderate" violation means that the company "significantly deviates from the requirements of the regulation or statute but some of the requirements are implemented as intended." p. 9 (emphasis supplied.) Further, the RCRA Civil Penalty Policy explains that a "minor" designation means that the company "deviates somewhat from the regulatory or statutory requirements but most of the requirements are met." p. 9 (emphasis supplied.) Thus, the question is whether Grady McCauley had a "minor" deviation because "most of the requirements are met," or a "moderate" deviation because, notwithstanding "significan[t] devia[tion]," "some of the requirements are implemented as intended," or whether Grady McCauley had a "major" deviation because it "totally disregarded the requirement" (p. 8).

All of the "paperwork" violations charged in U.S. EPA's Complaint are inapplicable if Grady McCauley qualifies as a small volume generator under 40 C.F.R. Section 261.5. Of course, if Grady-McCauley establishes its entitlement to treatment as a small volume generator, there is no liability and no penalty. This discussion precedes on the disputed assumption of liability in order to address penalty issues.

There should be no argument that Grady McCauley has met "some of the requirements" for a small volume generator. U.S. EPA's RCRA Civil Penalty Policy provides (p. 9) that when "some of the requirements are implemented," there has only been a "moderate" deviation from requirements. Indeed, since Grady McCauley can fairly be said to have met "most of the requirements" for a small volume generator, a "minor" designation would be appropriate for the factor "deviation from requirements."

Certainly the key requirement for small generator status is the amount of hazardous waste generated in a month. The requirements for small generator status are set forth in 40 C.F.R. Section 261.5 which provides in the very first sentence in paragraph (a) that:

> (a) A generator is a small quantity generator in a calendar month if he generates less than 1,000 kilograms of hazardous waste in that month.

There is no question that Grady McCauley generated substantially less than 1,000 kilograms of hazardous waste in any month. Indeed, even applying conservative assumptions, Grady McCauley would at worst only generate about 1/2 that amount.

The dry wells which Grady McCauley inherited from its predecessor Dice Decal operated in the real world like tanks. Further, Humbolt Sanitary Service removed Grady McCauley's hazardous waste along with its sanitary waste.

If a determination were made that Grady McCauley had only a "minor" deviation from the requirements for small generator status, under the Penalty Assessment Matrix on pp. 4 and 10 of the RCRA Civil Penalty Policy, an initial penalty from $3,000 to $4,099, (midpoint - $4,000), would be authorized (given U.S. EPA's previous designation of "moderate" for "potential for harm" which Grady McCauley is not now addressing). Similiarly, if a determination were made that Grady McCauley had a "moderate" deviation from the requirements for small generator status, under the Penalty Assessment Matrix, a penalty from $5,000 to $7,999 (midpoint - $6,500) would be authorized. Even if a determination were made that Grady McCauley had a "major" deviation from the requirements for small generator status, an $8,000 penalty would be appropriate, given the small generator requirements which have been met.

Reduction in the initial penalty assignment within the Penalty Assessment Matrix would be consistent with the complete absence of contamination detected in off-site wells and in all on-site wells except those drilled right next to the dry wells. Even these wells have contaminant levels that are extraordinarily small. For example, please note Respondent's Exhibit 5, Dave McCauley's letter to Ohio EPA on November 23, 1984, reporting the first water sampling results in this case. These results were contained in Wadsworth Testing Laboratories' November 21, 1984

VOC analysis which is also part of Respondent's Exhibit 5. This Report shows 39 ug/l for ethyl benzene and 140 ug/l for xylenes. This is 39 parts per billion for ethyl benzene and 140 parts per billion for xylenes. However, U.S. EPA has proposed at 50 Fed. Reg. 47022 (November 13, 1985) a Recommended Maximum Contaminant Level (RMCL) under the Safe Drinking Water Act of 680 ug/l for ethyl benzene and 440 ug/l for xylenes. In other words, U.S. EPA has proposed that major drinking water systems, like Chicago's, may have levels of ethyl benzene at the tap more than 17 times as high as those found in Grady McCauley's water and may have levels of xylenes more than 3 times as high as those found in Grady McCauley's water. Wadsworth Testing Laboratory's November 21, 1984 Report (Exhibit 5 showed that the lab had not detected any other volatile compounds in Grady McCauley's water.

In short, it is fair to conclude that there has been an overreaction to the miniscule amounts of contamination at Grady McCauley. Certainly a reduction in the initial penalty amount assigned to Grady McCauley under the Penalty Assessment Matrix would more fairly place Grady McCauley vis-a-vis all other small volume generators in the United States which may have a RCRA violation since it can hardly be said that Grady McCauley has, as compared to all others, a "major" deviation from the requirements.

C. Adjustment Factors - Based on New Information Not Considered Before Setting the Proposed Penalty Amount in the Complaint, Reductions for Good Faith, Promptness, Lack of Willfulness and Negligence, and Other Unique Factors Should be Made

U.S. EPA's RCRA Civil Penalty Policy provides in Section III entitled "Summary of the Policy" on pp. 4-5 that:

> After determining the appropriate penalty based on gravity and, where appropriate, economic benefit, the penalty may be adjusted upwards or downward to reflect particular circumstances surrounding the violation. The factors that should be considered are:
>
> Good faith efforts to comply/lack of good faith;
>
> Degree of willfulness and/or negligence;
>
> History of noncompliance;
>
> Ability to pay; or
>
> Other unique factors.
>
> These factors (with the exception of factors which increase the penalty such as history of noncompliance) generally will be considered after proposing the penalty in the complaint, i.e., during the settlement stage.

Thus, after the initial penalty amount has been proposed in the Complaint, adjustment factors such as good faith, promptness, and lack of negligence should be considered.

1. Reduction for Good Faith

A.

Grady McCauley is entitled to a substantial reduction in the initial penalty for its good faith efforts to comply. Grady McCauley believed in good faith that it succeeded to the small generator exemption enjoyed by its predecessor Dice Decal. Indeed, Dice Decal wrote to U.S. EPA on June 22, 1980 explaining that the business fell within the small generator exception (Exhibit 1). A copy of this letter was handed to U.S. EPA at the time of the November 20, 1980 site visit (Exhibit 2). Thus, there is strong contemporaneous evidence of the reliance on small generator status.

Although U.S. EPA had first-hand knowledge in November 1980 of Grady McCauley's system for handling the wash water and cleaning agents from its screens (Exhibit 2), at no time prior to the Complaint did U.S. EPA say anything to Grady McCauley orally or in writing which would call into question their good faith reliance that they were a small volume generator in compliance with RCRA.

B.

Indeed, Grady McCauley not only relied in good faith on their status as a small volume generator, they also believed in good faith that their waste was not hazardous. Grady McCauley thought that the use of biodegradable cleaning agents from Intercontinental Chemical Corporation (ICC) in screen washing avoided any environmental problems. Grady McCauley's good faith reliance was increased by the apparent satisfaction and lack of objection by a U.S. EPA Region V chemical engineer who participated in a three-way call on ICC's biodegradable cleaning agents with ICC's Director of Technology on November 20, 1980 during a visit to Grady McCauley's business (Exhibit 2).

In short, on two different and independent grounds, Grady McCauley had a good faith belief that their business was in compliance with law. Strong evidence of this good faith is the fact that it was communicated to U.S. EPA five months before the RCRA regulations became applicable and five years before U.S. EPA's Complaint.

C.

In assessing Grady McCauley's good faith effort to comply, it is important to remember that Dennis Grady and Dave McCauley took over the business on September 1, 1983. They had

been running the business less than six months at the time of Ohio EPA's initial inspection on February 9, 1984. Dennis and Dave relied in good faith on Dice Decal's claim for small generator status and on the ICC biodegradable cleaning agents. Certainly Dennis and Dave should not be treated the same as a company which had occasion to make a careful examination of its waste practices in 1980 in light of the new RCRA requirements. Dennis Grady and Dave McCauley had no reason to believe that carrying on the practices of their predecessor would not comply with law. Moreover, Dennis and Dave did not have a long time during which it might be reasonable for them to reexamine their handling of the waste water from the cleaning of screens. The determination that there might be RCRA problems at Grady McCauley's Middlebranch Road site was made during the initial months after Dennis and Dave had taken over the business and while they were consumed with all of the problems of running a new enterprise.

D.

Long before U.S. EPA's RCRA Complaint (more than 1/2 year) and without any order from Ohio EPA, Grady McCauley brought bottled water into the plant. As noted above, approximately one year later U.S. EPA proposed Safe Drinking Water Act Recommended Maximum Contaminant Levels (RMCL) which showed that Grady

McCauley's action was unnecessary. Nonetheless, the speed with which Grady McCauley acted and the action itself both are strong evidence of their good faith efforts to comply with the purposes of the environmental laws.

E.

The record of Grady McCauley's actions before U.S. EPA filed its Complaint is strong evidence of its good faith. A review of the steps taken more than 1/2 year before U.S. EPA enforcement shows the good faith of this small business in acting promptly and cooperatively with Ohio EPA. This is dramatically evident from a review of the Time Line set forth in McCauley's response to question No. 4 above showing Grady McCauley's prompt and cooperative action before U.S. EPA enforcement.

2. Absence of Willfulness and Negligence

U.S. EPA's RCRA Civil Penalty Policy provides expressly for reductions in the initial civil penalty when there is a lack of willfulness and/or negligence. The RCRA Civil Penalty Policy states that (p. 17): "Although RCRA is a strict liability statute, there may be instances where penalty mitigation may be justified based on the lack of willfulness and/or negligence." On the facts of this case, a substantial reduction in the penalty is warranted because of Grady McCauley's lack of willfulness and negligence.

A.

As noted above, Grady McCauley did not willfully violate the RCRA regulations. On the contrary, Grady McCauley believed that its continuation of its predecessor's practices and equipment for handling washwater from screen cleaning and its use of biodegradable cleaning agents from Intercontinental Chemical Corporation (ICC) eliminated environmental problems. Dennis Grady and Dave McCauley, who are businessmen, can hardly be judged negligent in believing that the company's status as a small volume generator and its ICC cleaning agents kept it in compliance with law when a U.S. EPA Region V chemical engineer reached the same conclusion after personally inspecting the waste handling system and practices and listening first-hand to ICC's Director of Technology during a 3-way call about the biodegradable cleaning agents (Exhibit 2). The absence of any suggestion that there were problems after an on-site review of Grady McCauley's waste disposal practices by the U.S. EPA Region V chemical engineer and by U.S. EPA consultants from Ecology & Environment, Inc. (who were presented as international specialists in the environmental sciences) helps support the conclusion that Dennis Grady and Dave McCauley were not negligent.

B.

U.S. EPA's RCRA Civil Penalty Policy provides that: (p. 18) "[i]n assessing the degree of willfulness and/or negligence" U.S. EPA should consider "how much control the violator had over the events constituting the violation." Grady McCauley did not install the dry wells which are at the heart of this case. Its predecessor Dice Decal did. Grady McCauley had had "control" over the business, including screen washing, for less than six months when Ohio EPA's first inspection took place. Dennis Grady and Dave McCauley did not have "control" in 1980 when businesses had occasion to review carefully the new RCRA requirements and to conform their waste management practices to the new requirements of law.

C.

U.S. EPA's RCRA Civil Penalty Policy also provides that "[i]n assessing the degree of willfulness and/or negligence" U.S. EPA should consider "whether the violator took reasonable precautions against the events constituting the violation." Among the precautions taken in this case were the use of ICC's biodegradable cleaning agents in the screen washing and the June 22, 1980 letter to U.S. EPA advising the Agency of the claim for small generator status (Exhibit 1).

D.

U.S. EPA's RCRA Civil Penalty Policy provides that: (p. 18) "[i]n assessing the degree of willfulness and/or negligence" U.S. EPA should consider "whether the violator knew or should have known of the hazards associated with the conduct." Grady McCauley is a small business which is most accurately described as a partnership between Dennis Grady and Dave McCauley in corporate form. Grady McCauley did not know of the "hazards" (if that is the right word) associated with its screen cleaning. This small business does not have toxicologists or environmental specialists on its staff. Grady McCauley believed that the ICC biodegradable cleaning agents avoided environmental "hazards." Dennis Grady and Dave McCauley should not be held to a higher standard of knowledge than U.S. EPA Region V chemical engineers and consultants from Ecology & Environment.

3. Other Unique Factors

U.S. EPA's RCRA Civil Penalty Policy provides expressly for reductions in the initial penalty amount for reasons other than the four enumerated adjustment factors (p. 20). Reductions are authorized for "factors which might arise on a case-by-case basis" (p. 20). In the present case, a substantial reduction is justified because of several unique factors in this case.

A.

When U.S. EPA issued its RCRA Complaint, Ohio had interim authorization. U.S. EPA may enforce hazardous waste regulations in states with authorized programs only when the State, after notice, has failed to act adequately to deal with the alleged violation. See RCRA Section 3008(A)(1) and (2), House Committee on Interstate and Foreign Commerce Report No. 94-1461 (Sept. 9, 1976) p. 31. Cf. Report of Senate Committee on Public Works, No. 94-988 (June 25, 1976) p. 17; United States v. Cargill, 508 F. Supp. 734 (D.Del. 1981); U.S. EPA March 15, 1982 Memorandum to All Regional Administrators and Regional Counsels, p. 3.

In the present case, as the time line set forth above makes dramatically clear, Ohio EPA was handling any RCRA problems at Grady McCauley's Middlebranch Road site more than adequately. U.S. EPA's enforcement led to interference with Ohio EPA's primary responsibilities under RCRA, delay, duplication, and added expense.

B.

There is a second point which also warrants a reduction in the proposed penalty under U.S. EPA's RCRA Civil Penalty Policy. U.S. EPA's delay in giving notice that the ICC biodegradable cleaning agents were not a complete solution and

that the dry wells would have to be removed or decontaminated caused Grady McCauley substantial prejudice warranting a major reduction in the proposed penalty. If U.S. EPA had made its views known on November 20, 1980 when it inspected the screen washing operation, or indeed had made its views known during the 2 3/4 years thereafter, Dennis Grady and Dave McCauley would not be the subject of an enforcement action. U.S. EPA knew in November 1980 the kind of cleaning agents used by the business and knew that the screen washings went to dry wells. If the Agency had commenced enforcement then, or within 2 3/4 years thereafter, Dennis Grady and Dave McCauley would have taken over a business without environmental problems.

The Courts have barred government enforcement actions in cases like Grady McCauley's or have ruled that substantially reduced penalties are required. See e.g., Moser v. United States, 341 U.S. 41 at 46 (1951), United States v. Bailey, 467 F. Supp. 925 (D.Ark. 1979), Roberts v. United States, 357 F.2d 938, 946 (Ct. claims 1966), United States v. American Greetings Corp., 168 F. Supp. 45 (N.D.Ohio 1958), aff'd. 272 F.2d 945 (6th Cir. 1959) (FTC's knowledgeable failure to object to defendant Card Manufacturer's practice of remounting its competitor's cards for display on its own blanked-out mounts for four years "impels the court to assess only a nominal penalty," 168 F. Supp. at 50), American Home Products v. Finch, 303 F. Supp. 488 (D.Del. 1969)

(Drug company's reliance upon long-standing FDA approval of its product excused it from failure to perform new clinical tests.), Dana Corp. v. United States, 470 F.2d 1032, 1045 (Ct. claims 1972) ("The Government is estopped from denying the actions of its agents within the scope of their authority and which are relied upon by others to their detriment."), Air Pollution Variance Board v. Western Alfalfa, 553 p.2d 811 (Colo. 1976) (Governmental delay following environmental inspection.), United States v. Lazy FC Ranch, 481 F.2d 985 (9th Cir. 1973) (Government failed to apprise private parties that arrangement was improper.)

In summary, a substantial reduction in the penalty should be made under the special facts of this case. As this tribunal noted in In the Matter of Union Oil Company of California, Docket No. RCRA 09-84-0223 (Jan. 14, 1985):

> The issue . . . is the appropriateness of penalizing Respondent when action taken by the EPA and the state misled respondent as to what its obligations under RCRA were. The goals of a civil penalty are deterrence, fair and equitable treatment of the regulated community and swift resolution of environmental problems. [EPA, Final RCRA Civil Penalty Policy (May 8, 1984) at 3.] It is difficult to see how any of these goals are furthered by imposing a penalty upon Respondent. This is not a case when failure to exact a penalty would reward a person who has been negligent or careless or shown a disposition to avoid its obligations under RCRA. It would obviously not be fair and equitable to the regulated community to levy penalties for violations caused or induced by mistakes or errors made by those responsible for administering RCRA.

Just as in Union Oil, no penalty should be assessed in the present case.

Respectfully submitted,

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(216) 687-8571

Counsel for Respondent
Grady McCauley Creative
Graphics, Inc.

CERTIFICATE OF SERVICE

A copy of the foregoing RESPONDENT GRADY McCAULEY'S PREHEARING EXCHANGE OF INFORMATION was served on T. Leverett Nelson, Esq., Assistant Regional Counsel, U.S. EPA Region V, 230 South Dearborn St., 5C-16, Chicago, Illinois 60604, counsel for the Complainant, this 11TH day of July, 1986 by mailing it first class, postage prepaid.

Kenneth C. Moore

RECD. 3/11/86 PED

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION V

IN THE MATTER OF:	)	Docket No. V-W-85-R-35
	)	
Grady McCauley Creative Graphics, Inc.	)	GRADY McCAULEY'S
7390 Middlebranch Road	)	ANSWER TO THE
Middlebranch, Ohio 44652	)	COMPLAINT
	)	

Respondent Grady McCauley Creative Graphics, Inc. ("Grady McCauley"), for its Answer to the Complaint, by its attorneys, (1) contests material facts upon which the Complaint is based, (2) contends that the amount of the penalty proposed in the Complaint is inappropriate and excessive, and (3) contends that Grady McCauley is entitled to judgment as a matter of law, stating as follows:

1. Grady McCauley is a very small business run by Dennis Grady and Dave McCauley. It is a partnership in corporate form.

2. Grady McCauley makes signs which its customers use to advertise their products or services. Grady McCauley uses screens to print these signs.

3. On September 1, 1983 Dennis Grady and Dave McCauley took over their screen printing business from Dice Decal Corporation. The business was operated at property at 7390 Middlebranch Road, which is in a semi-rural area.

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SMALL GENERATOR

4. Grady McCauley continued the practice of its predecessor Dice Decal Corporation in washing the reusable screens which it uses to make signs. Cleaning agents which were biodegradeable were used for the specific purpose of avoiding environmental problems. A small amount of solvent was also required to clean the screens. Much of this solvent was collected by a recycle system. A presently unknown but significant portion evaporated into the air. A small portion in the wash which was not collected by the recycle system passed through floor drains to dry wells. The dry wells were pumped out by Humboldt Sanitary Service Incorporated which also handled the sanitary waste at the site.

5. Grady McCauley's predecessor Dice Decal advised U.S. EPA Region V by letter dated July 22, 1980 that it qualified for small generator status. This was reconfirmed to U.S. EPA orally and in writing in a November 20, 1980 visit by U.S. EPA to the site discussed more fully below.

6. Grady McCauley generated substantially less per month than the 1,000 killograms ceiling required for small generator status by 40 C.F.R. §261.5 and Ohio Administrative Code (OAC) Rule 3745-51-05(A).

7. In August, 1985, the screen washing operation was moved to Grady McCauley's new replacement facility at 7584 Whipple Avenue, North Canton, Ohio. Wastewater from this location is discharged to a publicly owned treatment works.

II

8. On November 20, 1980, U.S. EPA made its only visit to the 7390 Middlebranch Road site then owned by Grady McCauley's predecessor Dice Decal Corporation. U.S. EPA representatives included Richard E. Boice from U.S. EPA Region V who stated that he was a chemical engineer and Ellen J. Jurczak and Claude E. Mays, III from U.S. EPA's contractor Ecology and Environment, Inc. who were presented as international specialists in the environmental sciences.

9. Although Dice Decal had already notified U.S. EPA that it qualified for the small generator exception in a letter of June 22, 1980, this was explained orally and a copy of the June 22, 1980, letter was handed to U.S.EPA at the time of the site visit so that the Agency was specifically aware of the claim for small generator status at the time of its inspection.

10. The U.S. EPA inspectors were specifically interested in what waste was generated and how it was disposed. U.S. EPA was given a complete tour of the plant, including waste

disposal operations from trash pick up to the handling of the wash used to clean the screens.

11. Dice Decal, like Grady McCauley, used biodegradeable materials from Intercontinental Chemical Corporation (ICC) in its screen washing for the purpose of avoiding any environmental problems. Mr. Boice, the U.S. EPA Region V chemical engineer, was specifically interested in the ICC chemicals. While the U.S. EPA representative was on the phone, a call was made to the Cincinnati Headquarters of Intercontinental Chemical Corporation. Mr. Gary M. Valosek, ICC's Director of Technology, was reached. He was specifically questioned about the ICC chemical and he explained its nature and biodegradable characteristics. Mr. Boice, the U.S. EPA Region V engineer, was satisfied.

12. Following the November 20, 1980 inspection, U.S. EPA concluded that there was not a hazardous waste problem at the 7390 Middlebranch Road site. U.S. EPA did not fill out the ten-page or so report normally required if there is an environmental problem.

13. U.S. EPA's only visit to the site was made almost precisely on the original due date for Part A applications. Certainly this was at the outset of the period when U.S. EPA made available administrative Consent Orders lacking penalties, allowing continued operation, and covering interim status.

14. U.S. EPA's actions with knowledge of the claim for small generator status were specifically misleading and contributed materially to the failure to perform the "paperwork," "filing" and other requirements alleged in the Complaint, if indeed these requirements were applicable.

15. U.S. EPA's action during the November, 1980, site visit was 2 years and 9 months before Dennis Grady and Dave McCauley took over the business.

III

NO FIRST-HAND KNOWLEDGE

16. The filing of the RCRA administrative Complaint against Grady McCauley in this case was improper. U.S. EPA's enforcement was not based on any inspection of the site by a U.S. EPA representative or on responses to any U.S. EPA information request under RCRA Section 3007. Instead, U.S. EPA's enforcement was based on Ohio EPA's inspection (as the Complaint itself recites) and on records and information from Ohio EPA. U.S. EPA had no first-hand or independent knowledge of the situation.

IV

INTERFERENCE WITH OHIO EPA

17. Ohio EPA had been properly handling Grady McCauley's case long before U.S. EPA's involvement. For example, pursuant to a cooperative plan worked out by Ohio EPA, Grady McCauley had retained Wadsworth Testing Laboratories and had submitted Wadsworth Testing Laboratories' December 26, 1984 "Ground Water Assessment Proposal" to Ohio EPA for review and approval. Ohio EPA had expanded and clarified the work to be done through a January 10, 1985 approval letter. Sampling had been undertaken, results provided to Ohio EPA, and a formal report was almost completed when U.S. EPA intervened. U.S. EPA did not participate in investigatory or technical matters, but rather first announced its presence to Ohio EPA and Grady McCauley through the Complaint which was filed on June 28, 1985.

18. Under the particular facts and circumstances of this case, the timing, method, and manner of U.S. EPA's enforcement action interrupted and interfered with Ohio EPA's handling of the problem. This was contrary to the express Congressional statutory purpose of the Resource, Conservation, and Recovery Act to establish "a viable Federal-State partnership to carry out the purposes of this Act" RCRA §1003(a)(7). Congress added this statement of purpose to the

statute in the 1984 Amendments to correct U.S. EPA's prior practice and to compel the federal agency to work cooperatively with the States.

19. U.S. EPA's belated and heavy-handed action "blindsiding" Ohio EPA and Grady McCauley's ongoing cooperative work was also contrary to the Resource, Conservation and Recovery Act's assignment of primary responsibility to Ohio EPA in these circumstances, and U.S. EPA's approval of Ohio's Hazardous Waste Management program through the grant of Phase I interim authorization.

V

FAILURE TO ISSUE NOV BEFORE COMPLAINT

20. The Complaint against Grady McCauley should not have been filed because U.S. EPA failed to perform the condition precedent of first issuing a Notice of Violation. 40 C.F.R. §22.37 sets forth the "Supplemental rules of practice governing the administrative assessment of civil penalties under the Solid Waste Disposal Act," which includes RCRA. Under 40 C.F.R. §22.37(a) "[w]here inconsistencies exist between these Supplemental rules and the Consolidated Rules (§§22.01 through 22.32), these Supplemental rules shall apply." The Supplemental rules provide in Section 22.37(e) that U.S. EPA must first

issue a Notice of Violation and only if the "violation extends beyond the thirteenth day after service of the notice of violation" may a Complaint issue. The Complaint in this case does not allege the kind of noncontinuous or intermittent violations which by their nature would last less than thirty days. Instead, the Complaint alleges continuing violations for which a Notice of Violation is required by 40 C.F.R. §22.37 before a Complaint can be filed.

VI

FAILURE TO NOTIFY STATE BEFOREHAND

21. Complainant has failed to comply with the express statutory prerequisite to bringing this action contained in RCRA Section 3008(a)(2), 42 U.S.C. §6928(a)(2), which provides that where an alleged violation "occurs in a State which is authorized to carry out a hazardous waste management program under Section 3006 [42 U.S.C. §6926], the Administrator shall give notice to the State in which such violation has occurred prior to issuing an order or commencing a civil action under this section." (Emphasis added.)

VII

LOSS OF RCRA AUTHORIZATION

22. U.S. EPA authority, if any, to enforce Ohio EPA hazardous waste rules expired on January 31, 1986 by virtue of the automatic statutory provision in §3006(c) since U.S. EPA has not granted Ohio "final authorization." See 51 Fed. Reg. 4128 (January 31, 1986).

VIII

BEAN COUNTING

23. Filing of a Complaint in this case was not based on consideration of the factors made relevant by RCRA but rather by a decision to initiate a certain number of enforcement actions within a reporting period.

IX

SIGNATURE ON COMPLAINT

24. The Complaint against Grady McCauley was not signed by Basil G. Constantelos, Director of the Waste Management Division of U.S. EPA Region V. Grady McCauley denies for want of information sufficient to form a belief as to the

truth thereof that the actual signatory (a) was in fact specifically and individually authorized to sign the Complaint, (b) was delegated authority in accordance with lawful procedures, (c) received a delegation in a writing which has been preserved and is available for review by the Administrative Law Judge and by any reviewing Courts, and (d) received a delegation of only the ministerial function of signing for a proper Complainant and not an improper re-delegation of discretionary authority to decide whether the individual facts and law applicable to Grady McCauley's case merited selection for enforcement. 40 C.F.R. §22.13, First Sentence).

X

NO STATEMENT OF REASONING BEHIND PENALTY AMOUNT

25. The Complaint against Grady McCauley violates 40 C.F.R. §22.14(a)(5) which provides that "[e]ach complaint for the assessment of a civil penalty shall include: . . . (5) A Statement explaining the reasoning behind the proposed penalty." (emphasis added.) The Complaint does not merely contain an inadequate statement of the reasoning behind its proposed penalty, it contains no statement at all.

XI

PENALTY NOT BASED ON STATUTE AND POLICY

26. The Complaint against Grady McCauley contains a proposed civil penalty which is excessive and which violates 40 C.F.R. §22.14(c) which provides that: "[t]he dollar amount of the proposed civil penalty shall be determined in accordance with any criteria set forth in the Act relating to the proper amount of a civil penalty and with any civil penalty guidelines issued under the Act." RCRA provides, inter alia, in Section 3008(a)(3) that "[i]n assessing such a penalty, the Administrator shall take into account the seriousness of the violation and any good faith efforts to comply with applicable requirements." U.S. EPA has issued civil penalty guidelines under RCRA in the form of the Final RCRA Civil Penalty Policy dated May 8, 1984. U.S. EPA's proposed civil penalty in this case does not comply with RCRA or with the RCRA Civil Penalty Policy, much less with a proper and lawful set of civil penalty guidelines.

XI

27. The Complaint fails to state a claim upon which relief can be granted.

XII

28. Complainant has failed to fulfill statutory, regulatory, and policy prerequisites to filing of the Complaint.

XIII

29. The claims in the Complaint are barred by the doctrines of laches, estoppel, waiver and/or ratification.

XIV

30. Grady McCauley has at all times acted with diligence and in good faith with Ohio EPA and U.S. EPA with respect to the RCRA hazardous waste program.

XV

31. Grady McCauley reserves the right to make, and does not waive, additional defenses, including those which may become apparent from additional investigation and discovery.

XVI

32. In response to the first sentence in the first unnumbered paragraph of the Complaint, Grady McCauley denies, as explained in greater detail herein, that the Complaint and Compliance Order were properly filed pursuant to Section 3008(a)(1) of the Resource Conservation and Recovery Act of 1976 as amended (RCRA), 42 U.S.C. §6928(a)(1) and the U.S. Environmental Protection Agency's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. Part 22.

33. In response to the second sentence in the first unnumbered paragraph of the Complaint, Grady McCauley denies for want of knowledge whether the Director, Waste Management Division, United States Environmental Protection Agency, Region V (U.S. EPA) has been authorized to issue this Complaint on behalf of the Agency. 40 C.F.R. §22.03.

34. In response to the third sentence of the first unnumbered paragraph of the Complaint, Grady McCauley admits that U.S. EPA has attempted to name it a Respondent, denies that it should lawfully have been made a Respondent to this Complaint, denies that it is located at 7390 Middlebranch Road, Middlebranch, Ohio 44652, but states that it is located at 7584 Whipple Avenue, North Canton, Ohio 44720.

35. In response to the second unnumbered paragraph of the Complaint, Grady McCauley denies for want of knowledge the allegations in the first sentence and denies the allegations in the second sentence.

36. In response to the allegations in the third unnumbered paragraph of the Complaint, Grady McCauley denies that it has violated the statutory and regulatory sections enumerated therein and, to the extent that the third unnumbered paragraph refers to a governmental determination of violation other than the third unnumbered paragraph itself, denies the allegation for want of knowledge.

37. In response to unnumbered paragraph four of the Complaint labeled "Jurisdiction", Grady McCauley denies that the four statutory sections identified by U.S. EPA provide jurisdiction for this action: (1) RCRA Section 1006(a), 42 U.S.C. §6905(a), dealing with integration with other environmental statutes, (2) RCRA Section 2002(a)(1), 42 U.S.C. §6912(a)(1), dealing with the U.S. EPA Administrator's authority to promulgate certain regulations after consultation, (3) RCRA Section 3006(b), 42 U.S.C. §6926(b), dealing with authorization of state programs, and (4) RCRA Section 3008(a)(2), 42 U.S.C. §6928(a)(2), dealing with the requirement that U.S. EPA notify a state with an authorized RCRA program before issuing an order or commencing a civil action.

38. In response to the first sentence in unnumbered paragraph five of the Complaint, Grady McCauley admits that on or about July 15, 1983, U.S. EPA granted Ohio "interim authorization" under Section 3006 of RCRA to administer Phase I of the RCRA program in lieu of the federal program.

39. In response to the second sentence of unnumbered paragraph five of the Complaint, Grady McCauley denies for want of knowledge that U.S. EPA's grant of Phase I interim authorization allows U.S. EPA to enforce Ohio's hazardous waste statutes and regulations and, as explained more fully herein, denies that U.S. EPA had any such authority after January 31, 1986.

40. In response to the third sentence in unnumbered paragraph five of the Complaint, Grady McCauley admits that U.S. EPA retained some kinds of authority in matters related to the issuance of RCRA permits, but denies that this authority has application to this case.

41. In response to the fourth sentence in unnumbered paragraph five of the Complaint, Grady McCauley admits that the Complaint and Compliance Order on their face seek to enforce both Federal and State regulations, but denies that U.S. EPA should, or can lawfully, do so.

42. In the Section of the Complaint labeled "Findings", Grady McCauley admits that the allegations in

paragraphs 1, 2, 3, and 4 are generally true as abstract statements of law, although some of the rulemakings have been amended at later dates, but denies that the statements are true in every case, for example, that of the small generator. 40 C.F.R. §261.5; Ohio Administrative Code Rule 3745-51-05.

43. In response to the allegations in paragraph 5 of the Complaint, Grady McCauley admits that it is an Ohio corporation, admits that it owns property at 7390 Middlebranch Road, but otherwise denies the allegations of paragraph 5 of the Complaint.

44. In response to the allegations in paragraph 6 of the Complaint, Grady McCauley admits that an inspection of the property at 7390 Middlebranch Road was made by Ohio EPA on or about February 9, 1984, denies for want of knowledge that it was handling hazardous waste listed for ignitability and toxicity, and otherwise denies the allegations of paragraph 6 of the Complaint.

45. Grady McCauley denies the allegations of paragraphs 7, 8, 9, and 10 of the Complaint.

46. Grady McCauley denies each allegation and statement not specifically admitted.

RECONFIRMATION OF

REQUEST FOR HEARING

Grady McCauley reconfirms the request for hearing previously filed in this case.

WHEREFORE, Respondent Grady McCauley Creative Graphics, Inc. prays that

(A) an initial decision and final order be issued in its favor,

(B) that it receive any other favorable relief or remedies to which it is entitled by the law or equities of the case, and

(C) in the event that an initial decision and/or final order are issued in favor of Complainant, that the amount of the civil penalty should be reduced below that sought by the Complaint to the lowest possible level.

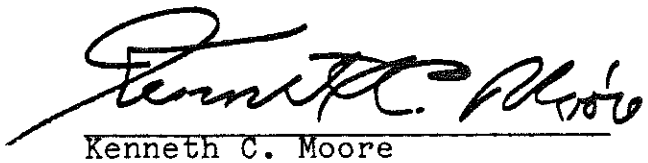
Respectfully submitted,

Kenneth C. Moore
Squire, Sanders & Dempsey
1800 Huntington Building
Cleveland, Ohio 44115
(216) 687-8571

Attorneys for Respondent
Grady McCauley Creative
Graphics, Inc.

CERTIFICATE OF SERVICE

A copy of the foregoing GRADY MCCAULEY'S ANSWER TO THE COMPLAINT was served by first-class mail this 5th day of March, 1986, on counsel for Complainant, T. Leverett Nelson, Assistant Regional Counsel, U.S. EPA Region V, 230 South Dearborn Street, Chicago, Illinois 60604.



Kenneth C. Moore
Counsel for Respondent

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December 6, 1985

OVERNIGHT DELIVERY

Pamela Rekar, Esq.
Assistant Regional Counsel
U.S. EPA Region V
230 S. Dearborn St., 5C-16
Chicago, Illinois 60604

Re: In Re Grady McCauley Creative Graphics, Inc.
Case No. V-W-85 R-35

Dear Counselor:

On behalf of Grady McCauley, I am sending you a proposed Sampling Plan and a proposed Consent Agreement and Final Order. The Sampling Plan is also being submitted to Ohio EPA. The enclosed Sampling Plan was prepared by Frank Boinski of Boinski Environmental Consultants, Inc. Like the Wadsworth Testing Labs Report on groundwater monitoring and the other materials submitted to U.S. EPA at the meeting at Region V, the enclosed Sampling Plan reflects Dennis Grady's and Dave McCauley's policy of trying to work amicably with Ohio EPA and U.S. EPA to achieve a mutually agreeable settlement.

I apologize for not sending you the proposed Consent Agreement and Final Order earlier. Thus, instead of you having the pleasure of reviewing this counterproposal over the Thanksgiving weekend, I had the pleasure of working on the draft and underlying legal issues which were reviewed and approved by Dennis and David this week. While we are still checking on some facts, I felt we should submit this draft now. I apologize for any inconvenience which this delay may have caused.

While the reasons for some of the provisions in the enclosed draft Consent Order may be apparent on their face, others may not be so obvious. Rather than attempting to provide a full explanation of each provision in this letter, which would make this correspondence too long and undoubtedly result in some unnecessary explanation, I suggest that you give me a call. It may be worth noting here that the enclosed draft was influenced by the following recent Consent Agreements and Final Orders from U.S. EPA Region V:

Com-Pak Engineering, Inc., Brighton Landfill Division, U.S. EPA Region V, Docket No. V-W-84-R-0-82, Order dated September 10, 1985

Park Plating and Metal Finishing Company, U.S. EPA Region V, Docket No. V-W-84-R-030, Order dated September 17, 1984

Environmental Waste Control, Inc., Inkster Michigan, U.S. EPA Region V, Docket No. V-W-84-R-037, Order dated October 31, 1984

Tricil Environmental Services, Inc., U.S. EPA Region V, Docket No. V-W-84-R-070, Order dated April 10, 1985

Wayne Disposal, Inc., Site 2, U.S. EPA Region V, Docket No. V-W-84-R-022, Order dated October 18, 1984

Thank you very much. Please do not hesitate to call if you have any questions.

Sincerely yours,

Kenneth C. Moore

/eaw
Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION V

IN THE MATTER OF:	)	Docket No. V-W-85 R-35
	)	
Grady McCauley Creative Graphics, Inc. 7390 Middlebranch Road Middlebranch, Ohio 44652	)	CONSENT AGREEMENT AND FINAL ORDER
	)	
NON-NOTIFIER	)	

On June 28, 1985, a Complaint was filed in this matter pursuant to Section 3008 of the Resource Conservation and Recovery Act, as amended, (RCRA) 42 U.S.C. Section 6928, and the United States Environmental Protection Agency's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. Part 22. The Complainant is the Director of the Waste Management Division, Region V, U.S. Environmental Protection Agency (hereinafter U.S. EPA). The Respondent is Grady McCauley Creative Graphics, Inc.

The Parties to this action, desiring to settle this action and believing that this settlement is in the public interest, enter into the following stipulations:

1. Respondent has been served a copy of the Complaint with the Notice of Opportunity for Hearing on this matter.

2. Jurisdiction exists to enter this Consent Agreement and Final Order.

3. Respondent is a partnership in corporate form which carries on a screen printing business. The reusable screens employed in the business were washed at Respondent's facility at 7390 Middlebranch Road, Middlebranch, Ohio 44652. The solvent and ink residue in the wash which was not collected by the recycle system passed through floor drains to dry wells. In August 1985 the screen washing operation was moved to Respondent's new replacement facility at 7584 Whipple Avenue, North Canton, Ohio 44720, which discharges its wastewater to a publicly owned treatment works.

4. On or about September 1, 1983 Mr. Dennis Grady and Mr. David McCauley assumed management and control of the facility at 7390 Middlebranch Road.

5. Respondent did not generate in any calendar month more than 1000 kilograms of waste wash solvent and ink residues. These solvent and ink wastes were not acutely hazardous wastes subject to lower exemption levels under OAC Rule 3745-51-05.

6. The parties have discussed settlement of this action in an informal conference held in the offices of U.S. EPA Region V in Chicago, Illinois on August 14, 1985.

7. This Agreement and Order shall not constitute a finding, determination, evidence, or an admission of any issue of law or fact, including fault or liability on the part of the Respondent.

8. The amount of the penalty ordered and consented to in this case has been calculated by taking into account the following factors:

A. The extremely small size of Grady McCauley's business.

B. Grady McCauley's good faith efforts to comply. See 3008(a)(3).

C. Grady McCauley's early and substantial efforts prior to filing of the Complaint or other U.S. EPA involvement.

D. The failure of U.S. EPA, like Grady McCauley, to identify noncompliance or a problem notwithstanding an on-site inspection on or about November 20, 1980, and questioning of the predecessors of Messrs. Grady and McCauley and questioning of the manufacturer's representative on the biodegradable products used by the facility in screen washing to prevent environmental problems.

E. The seriousness of the violation, including the absence of sampling evidence of off-site contamination, the low concentrations of contamination in on-site samples, and the low potential for harm.

F. Grady McCauley's reliance on biodegradable compounds to eliminate environmental problems with its

waste prior to any governmental involvement. (Notwithstanding the assurance of the manufacturer, Complainant has subsequently determined that these biodegradable products did not render the waste non-hazardous.)

G. The acquisition of control of the facility by Messrs. Grady and McCauley on or about September 1, 1983, long after the due date for notification under Section 3010 and the due date for filing Part A applications had passed.

H. The small, if not negative, economic benefit received from the alleged noncompliance.

I. The extent of deviation from regulatory requirements, especially in light of the small volume generator provisions.

9. Settlement of the disputed issues arising from the Complaint without further administrative or judicial proceedings is in the public interest, and avoids the burden and expense of litigation for the parties. Entry of this Consent Agreement and Final Order is the most appropriate means of resolving these issues. Accordingly, Respondent consents to the issuance of the Order hereinafter recited, and hereby consents to the payment of a civil penalty in the amount stipulated.

ORDER

Based on the foregoing stipulations, without the taking of any testimony, without the trial or adjudication of any issue of law or fact, and without this Consent Agreement and Final Order constituting a finding, determination, evidence, or an admission of any issue of law or fact with respect to Respondent, the parties agree to the entry of the following Final Order in this matter:

10. Respondent has ceased the generation and any subsequent treatment, storage or disposal of any hazardous waste at the facility at 7390 Middlebranch Road, Middlebranch, Ohio.

11. Respondent has submitted to the Ohio Environmental Protection Agency (OEPA) and U.S. EPA, and OEPA and U.S. EPA have approved, a Sampling Plan to identify the extent of soil and groundwater contamination at the facility. This plan includes but is not limited to the installation of a groundwater monitoring system and soil sampling.

12. Respondent shall, within 180 days of March 1, 1986, complete the activities described in the Sampling Plan.

13. Respondent shall within 30 days of completion of the activities described in the Sampling Plan, prepare and submit to OEPA and U.S. EPA a Closure Plan for the dry wells which would meet the pertinent requirements of Ohio Administrative Code 3745-

66-10, -11, -12(A)(1), (3), and (4) and (D), and -14 and -15. This closure plan must clearly detail the activities which will be undertaken by Respondent to control, minimize, or eliminate, to the extent necessary to protect human health and the environment, post-closure escape of hazardous waste, hazardous waste constituents, leachate, contaminated rainfall, or waste decomposition products to the ground or surface waters or to the atmosphere. As part of the closure activities, Respondent at its option may elect to either remove and properly dispose of the existing dry wells or clean and decontaminate them.

14. OEPA will approve Grady McCauley's Closure Plan or specify in writing to Grady McCauley the modifications necessary for approval within 90 days of receipt of Grady McCauley's Closure Plan. Grady McCauley must modify its Closure Plan or submit a new Closure Plan within 30 days of receipt of OEPA's specification of necessary modifications. Approval of Grady McCauley's initial, modified, or new Closure Plan shall not be unreasonably withheld. Grady McCauley shall perform all closure activities detailed in the Closure Plan or modified Closure Plan submitted by it and finally approved by OEPA, in accordance with the schedule and force majeure clause contained therein.

15. Upon completion of the required closure activities, Respondent shall certify in writing to U.S. EPA and to OEPA that

the facility has been closed in accordance with the specifications in the approved closure plan. Respondent shall also submit, or cause to have submitted to U.S. EPA and to OEPA, written certification of the same from the independent registered professional engineer that observed the closure activities.

16. Within twenty-five (25) business days after completion of the requirements identified in paragraphs 12, 13, 14, and 15 above, Respondent shall notify U.S. EPA in writing. This notification shall be submitted no later than the times stipulated above to Mr. Paul Dimock, U.S. EPA, Region V, Waste Management Division, 230 South Dearborn Street, Chicago, Illinois 60604, Attention: RCRA Enforcement Section. A copy of these documents shall also be submitted to Paula Cotter, Division of Solid and Hazardous Waste Management, Ohio Environmental Protection Agency, 361 East Broad Street, Columbus, Ohio 43216.

17. Respondent shall pay a civil penalty in the amount of $1,200 (ONE THOUSAND TWO HUNDRED DOLLARS), payable to the Treasurer of the United States in three equal installments within sixty (60), one hundred twenty (120), and one hundred eighty (180) days from OEPA's approval of Grady McCauley's Closure Plan as initially submitted or as modified by Grady McCauley. Said payment shall be mailed to the Regional Hearing Clerk, U.S. EPA, Region V, P.O. Box 70753, Chicago, Illinois 60673. Copies of the transmittal of the payment should also be sent to both the

Regional Hearing Clerk, Planning and Management Division and the Solid Waste and Emergency Response Branch Secretary, Office of Regional Counsel, U.S. EPA, 230 South Dearborn Street, Chicago, Illinois 60604.

18. U.S. EPA expressly reserves all rights which it may have under RCRA Section 3008(a)(3) and RCRA Section 3008(h) should Respondent fail to comply with any requirements of the Order. Notwithstanding any other provision of the Order, an enforcement action may be brought pursuant to Section 7003 of RCRA or other statutory authority should the U.S. EPA find that the handling of solid waste or hazardous waste at the facility presents an imminent and substantial endangerment to human health or the environment. Nothing in this Consent Agreement and Final Order limits or waives the defenses and arguments available to Respondent Grady McCauley in any future proceedings, including without limitation the contention that it is only subject to the requirements applicable to small volume generators, and nothing in this Consent Agreement and Final Order restricts, limits, or waives its rights to judicial review of administrative action.

19. This Consent Agreement and Final Order constitutes a settlement and final disposition of the complaint filed in this case and stipulations hereinbefore recited.

20. The above Consent Agreement and Final Order consisting of nine pages is hereby consented to by both of the parties to this proceeding.

Agreed this _____ day of _____, 1985.

Grady McCauley Creative Graphics, Inc., Respondent

By: _____

Agreed this _____ day of _____, 1985.

_____
Basil G. Contantelos
Director, Waste Management Division
U.S. Environmental Protection Agency
Region V, Complainant

The above being agreed and consented to, it is so ORDERED this _____ day of _____, 1985.

_____
Valdas V. Adamkus
Regional Administrator
U.S. Environmental Protection Agency

GROUNDWATER AND SUBSURFACE SOIL SAMPLING PLAN
GRADY McCAULEY CREATIVE GRAPHICS, INC.
MIDDLEBRANCH ROAD LOCATION
MIDDLEBRANCH, OHIO 44652

REVISION NO.1

DATE: NOVEMBER 26, 1985

PREPARED BY:

BOINSKI ENVIRONMENTAL CONSULTANTS, INC.
800 CARRIAGE ROAD
PITTSBURGH, PA 15220

APPROVED BY:

F.J. BOINSKI
EXECUTIVE VICE PRESIDENT

1.0 Introduction

This sampling plan was prepared in response to concerns raised by the Ohio Environmental Protection Agency (Ohio E.P.A.) and the U.S. Environmental Protection, Region V (E.P.A.) relative to the possible contamination of subsurface soils and groundwater underlying the Grady McCauley Creative Graphics, Inc. (Grady McCauley), Middlebranch, Ohio, plant and office facility. It is hypothesized that past, discontinued practices of discharging wastewater generated during screen cleaning operations through either of two leach well systems may have introduced organic chemical contaminants to the immediate environment.

A preliminary, screening survey of the potentially affected areas and aquifers was conducted during the period of March-July, 1985. Although data generated during this initial program is statistically insignificant, extremely low concentrations of several compounds were measured. In the interest of determining whether a contamination problem exists or, if a problem is verified, the extent and severity of the problem, Grady McCauley has elected to proceed with the sampling plan described below.

2.0 Scope of Work

The development of this plan included a review of historical information regarding the facility and its operation and interviews with its present owners. Based on this review, the scope of work is divided into the matrices of surface and subsurface soils and groundwater.

2.1 Surface and Subsurface Soils

2.1.1 Excluded Areas

2.1.1.1 Vicinity of Monitoring Wells 1 and 1A

Although minor contamination of surface and subsurface soils was reported from the results of the screening survey, this area does not require further study to develop data adequate to select a remedial alternative. Minimal, reported contamination of this area is attributed to the only marginally successful operation of Leach Wells 1 and 2. These wells repeatedly plugged and overflowed during their active lives; on several occasions, leach well overflow was observed percolating to the soil surface immediately above their buried location. These wells were pumped dry and filled with sand in 1983 and have not been used since that time. Consequently, potential residual contamination is believed to be confined to the immediately adjacent area.

2.1.1.2 Vicinity of Monitoring Wells 3 and 3A

Although minor contamination of surface and subsurface soils was reported from the results of the screening survey, this area does not require further study to develop data adequate to select a remedial alternative. Minimal, reported contamination of this area is attributed to its former use as a trash collection and burning site. Since all trash and burned residual trash were removed several years ago, it is reasonable to assume that no new sources of potential contamination exist. Consequently, any potential residual contamination is believed to be confined to the immediate vicinity of the former trash collection area.

2.1.2 Additional Monitoring Well Development

As will be discussed below, this sampling plan is phased on the basis of the results of preceding efforts. However, the following discussions are pertinent to the implementation and development of each phase which involves drilling and developing additional monitoring wells.

2.1.2.1 Sample Collection

Soil samples will be collected at five foot increments using the "split spoon" method of sample collection. Each sample will be labeled with respect to well number and depth at which it was collected and stored in an air tight container.

2.1.2.2 Sample Analysis

Each of the first four split spoon samples collected during the drilling of each new monitoring well will be extracted with chloroform. The extract solution will then undergo a gas chromotographic/purge and trap/flame ionization detector analysis to determine its ethylbenzene, xylene, and methylene chloride concentrations; these parameters were chosen as indicators of contamination on the basis of concentrations reported from soil samples collected during the screening analysis.

Remaining split spoon samples for each well will be composited to produce a fifth sample which will be extracted and analyzed as described above. If the analysis of the composite sample demonstrates the absence of ethylbenzene, methylene chloride, and xylene, no further analyses will be conducted. If the analysis demonstrates a measurable concentration of any of the compounds, additional, individual split spoon samples will be analyzed in the order in which they were collected until no measurable concentration of any of the three compounds is detected or until the supply of samples is exhausted.

2.2 Groundwater Monitoring Wells

The previous study area will be initially expanded to include two new wells which are labeled No. 4 and No. 5 on the attached topographic map and an existing well which has been labeled No. 6. The locations of these wells were chosen on the basis of the presumed groundwater flow direction demonstrated by the results of the screening survey. Also, wells No. 4 and No. 5 are located at the northeastern and southeastern extremes of Grady McCauley's property.

Should subsequent study results indicate that an expansion in the size of the study area is again required, the previously hypothesized hydraulic connection between groundwater and the Middle Branch of the Nimishillen Creek will be investigated further. Two sampling stations will be located approximately two hundred yards upstream and downstream of the stream segment believed most likely to be influenced by a groundwater contribution. If none of the contaminants listed above are detected during the stream sampling program, it will be assumed that the leading edge of the groundwater plume has not migrated to this distance.

This result will lead to the installation of two additional monitoring wells which are labeled No. 7 and No. 8 on the attached topographic map. Although they will not be located on Grady McCauley property, they will be valuable in supplying information regarding contamination at a "mid point" between the initial study expansion area and the stream.

2.2.1 Well Drilling and Development

All new wells will be sufficiently sized to allow their secondary use as pumping wells, rather than monitoring wells, should study results so dictate.

The wells will be drilled using the hollow rod/cable tool drilling method. As described in Section 2.1.2.1 above, "split spoon" subsurface soil samples will be collected concurrently with the drilling of each well. Each well will be advanced by driving a casing and drilling out the encased materials. The hollow tube sampler will be driven five feet ahead of the casing to collect undisturbed soil samples. The casing will then be driven to the depth of the sampler. A stainless steel screen will be installed at that depth to allow the collection of a water sample from that stratum. This sequential process will be repeated until bedrock is reached.

Subsequent to the selection of a screening interval(s), an appropriate length of PVC pipe, screened at the interval(s) selected from drilling logs will be inserted into the casing. The casing will be extracted to allow adjacent soils to cave around the screen(s). When the screen is sufficiently exposed, the remaining casing will be removed and the hole will be backfilled with bentonite pellets to the surface. A galvanized steel casing with locking cap will be fitted over the top of the PVC pipe; this casing will be driven into the ground and held in place by a concrete cap on the hole. All standard, accepted QA/QC procedures will be followed at all times.

2.2.2 Sample Collection

Each well will be bailed empty twice prior to the collection of a water sample. Water samples will be collected in duplicate and stored in labeled amber vials with septum tops. All samples will be refrigerated at all times prior to their analysis. The samples will be analyzed using a gas chromatographic/purge and trap/flame ionization detector method to determine their ethylbenzene, xylene, and isophorone concentrations; these parameters were chosen as indicators on the basis of concentrations reported from water samples collected during the screening survey.

2.2.3 Water Sample Collection Frequency

Initially, sample collection will be limited to Wells 4, 5, and 6. Samples will be collected on alternate weeks for a two month period or until a total of five sampling rounds per well are completed. This program will supply the minimum number of data points required to assign a statistical validity to the results of the sampling program.

Should a decision to initiate a stream sampling program be made, samples will be collected at the locations described in Section 2.2 above on alternate weeks for a two month period or until a total of five sampling rounds per location are completed. Additionally, the stream bank along the stream segment most likely to be affected by a hydraulic connection with groundwater will be carefully inspected to determine whether any suspect seep areas exist. Suspect areas will be sampled, and samples will be analyzed for all parameters included in Sections 2.1.2.2 and 2.2.2 above. A frequency of resampling will be established if measurable levels of contamination are observed from the results of the first sampling round; it is anticipated that an expanded sampling program will consist of a minimum of five samples at each location where contamination is discovered.

Should a decision to expand the program to include Monitoring Wells No. 7 and No. 8 be made, the sample collection frequency will be identical to that described above for Wells 4, 5, and 6.

2.2.4 Analytical and QA/QC Procedures

Only E.P.A.-approved analytical methods will be employed during the completion of this program. The selection of a particular method over acceptable alternatives will be made on the basis of its lower detection limit and potential interferences from other compounds believed to be present in a sample. All standard, accepted quality assurance/quality control procedures will be followed at all times during the collection and analyses of all samples generated during this program.

3.0 Project Schedule

The project can be initiated within 30 days following Ohio E.P.A.'s final approval of the sampling plan. However, in the interest of generating meaningful, representative data, it is recommended that the program should not be conducted during winter months. The following chart presents a proposed project schedule:

PROPOSED PROJECT SCHEDULE

MONTH/ACTIVITY	3/86	4/86	5/86	6/86	7/86	8/86	9/86	10/86	11/86
Drill & Develop Wells 4&5	1---15								
Sample Wells 4,5,&6	18----------	----------	----13						
Preliminary Lab Report			20						
Sample Stream & Seeps			25----------	----------	----20				
Preliminary Lab Report					27				
Drill & Develop Wells 7&8					27----	--10			
Sample Wells 7&8						10----------	----------	-5	
Preliminary Lab Report								12	
FINAL REPORT									19

Squire, Sanders & Dempsey

Additional Offices:
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Phoenix, Arizona
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Counsellors at Law
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Telex 985-661
Telecopier 1 (216) 687-8777
Telecopier 2 (216) 687-8780

Direct Dial Number

(216) 687-8571

August 2, 1985

Ms. Beverely Thompson, Esq.
Regional Hearing Clerk
Planning and Managerment Div.
U.S. EPA Region V
230 S. Dearborn St.
Chicago, Illinois 60604

Re: In Re Grady McCauley Creative Graphics, Inc.
Docket No. V-W-85 R-35

Dear Ms. Thompson:

I am sending you the original and three copies of Respondent Grady McCauley Creative Graphics, Inc.'s MOTION FOR EXTENSION OF TIME. Please date stamp one of the copies and return it to me in the self-addressed, postage prepaid envelope enclosed.

Please do not hesitate to call me (collect) at (216) 687-8571 should you have any questions. Thank you very much.

Sincerely yours,

Kenneth C. Moore

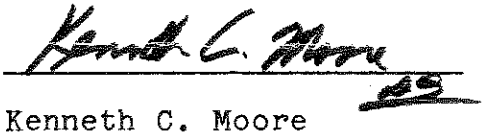
/eaw
Enclosures
cc: Pamela Rekar, Esq. (enc.)
Paul Dimock (enc.)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION V

IN THE MATTER OF:	)	Docket No. V-W-85 R-35
	)	
Grady McCauley Creative Graphics, Inc.	)	MOTION FOR EXTENSION
7390 Middlebranch Road	)	OF TIME
Middlebranch, Ohio 44652	)	

Respondent Grady McCauley Creative Graphics, Inc. hereby moves for an extension of 60 days to Tuesday, October 1, 1985 to serve its response to the Complaint in this matter. Counsel for Complainant has authorized the undersigned to state that she has no objection to this Motion for extension of time. Respondent has not previously sought or received any extensions of time. Among other reasons, Respondent seeks this extension of time in order to pursue informal settlement discussions with U.S. EPA. Respondent is an incorporated partnership and as a small business would strongly prefer to explore settlement separately and in advance of full scale litigation.

Respectfully submitted,



Kenneth C. Moore
SQUIRE, SANDERS & DEMPSEY
1800 Huntington Bldg.
Cleveland, Ohio 44115
(216) 687-8571

Counsel for Respondent
Grady McCauley Creative
Graphics, Inc.

CERTIFICATE OF SERVICE

A copy of the foregoing MOTION FOR EXTENSION OF TIME was served on Pamela Rekar, Assistant Regional Counsel, U.S. EPA Region V, 230 South Dearborn St., Chicago, Illinois 60604, counsel for the Complainant, Director Waste Management Division, United States Environmental Protection Agency, Region V, this 2nd day of August, 1985 by mailing it first class, postage prepaid.

Kenneth C. Moore

Squire, Sanders & Dempsey

Additional Offices:
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New York, New York
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Direct Dial Number

(216) 687-8571

August 1, 1985

FEDERAL EXPRESS

Ms. Beverely Thompson, Esq.
Regional Hearing Clerk
Planning and Managerment Div.
U.S. EPA Region V
230 S. Dearborn St.
Chicago, Illinois 60604

Re: In Re Grady McCauley Creative Graphics, Inc.
Docket No. V-W-85 R-35

Dear Ms. Thompson:

I am sending you by overnight delivery the original and three copies of Respondent Grady McCauley Creative Graphics, Inc.'s REQUEST FOR HEARING. Please date stamp one of the copies and return it to me in the self-addressed, postage prepaid envelope enclosed.

Please do not hesitate to call me (collect) at (216) 687-8571 should you have any questions. Thank you very much.

Sincerely yours,

Kenneth C. Moore

/eaw
Enclosures
cc: Pamela Rekar, Esq. (enc.)
Paul Dimock

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION V

IN THE MATTER OF:	)	Docket No. V-W-85 R-35
	)	
Grady McCauley Creative Graphics, Inc.	)	
7390 Middlebranch Road	)	REQUEST FOR HEARING
Middlebranch, Ohio 44652	)	

Respondent Grady McCauley Creative Graphics, Inc. ("Grady McCauley"), hereby makes formal request for a hearing on Complainant's Complaint, Findings of Violations, and Compliance Order, including the proposed compliance schedule and civil penalty. This formal request for a hearing on all issues is made pursuant to, inter alia, the Resource Conservation and Recovery Act, as amended, (RCRA), 42 U.S.C. §6901 et seq. and U.S. EPA's Consolidated Rules of Practice governing the administrative assessment of civil penalties and the revocation or suspension of permits, 40 C.F.R. Part 22.

In addition, Grady McCauley requests an informal settlement conference with U.S. EPA. This written request for an informal settlement conference is being sent to Mr. Paul Dimock, Waste Management Division, at U.S. EPA Region V.

Respectfully submitted,

Kenneth C. Moore

Kenneth C. Moore
SQUIRE, SANDERS & DEMPSEY
1800 Huntington Building
Cleveland, Ohio 44115
(216) 687-8500

Attorney for Respondent
Grady McCauley Creative
Graphics, Inc.

CERTIFICATE OF SERVICE

A copy of the foregoing REQUEST FOR HEARING was served on Pamela Rekar, Assistant Regional Counsel, U.S. EPA Region V, 230 South Dearborn St., Chicago, Illinois 60604, counsel for the Complainant, Director Waste Management Division, United States Environmental Protection Agency, Region V, this 1st day of August, 1985 by mailing it first class, postage prepaid.

Kenneth C. Moore

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
230 SOUTH DEARBORN ST.
CHICAGO, ILLINOIS 60604

JUN 28 1985

REPLY TO THE ATTENTION OF:
5HE-12JCK

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Dennis T. Grady
Registered Agent and President
Grady McCauley Creative Graphics, Inc.
P.O. Box 165
Middlebranch, Ohio 44652

Re: Complaint, Findings of Violation and Compliance Order

Dear Mr. Grady:

Enclosed, please find a Complaint and Compliance Order which specifies this Agency's determination of certain violations by your company of the Resource Conservation and Recovery Act (RCRA) as amended, 42 U.S.C. §6901 et seq. This Agency's determination is based on an inspection of your facility on February 9, 1984, by the Ohio Environmental Protection Agency (OEPA), and information in our files and OEPA files about your facility at 7390 Middlebranch Road, Middlebranch Ohio. The findings in the Complaint state the reasons for such a determination. In essence, the facility failed to obtain a permit (or achieve interim status) as required by Section 3005 of RCRA, prior to storing and disposing of hazardous waste, and violated regulations applicable to generators of hazardous waste and to owners and operators of treatment, storage, and disposal facilities.

Accompanying the Complaint and Compliance Order is a Notice of Opportunity for Hearing. Should you desire to contest the Complaint or penalty, a written request for a hearing is required to be filed with Ms. Beverely Thompson, Regional Hearing Clerk, at the United States Environmental Protection Agency (U.S. EPA), 230 South Dearborn Street, Chicago, Illinois 60604, within 30 days from receipt of this Complaint. A copy of your request should also be sent to Ms. Pamela Rekar, Assistant Regional Counsel, U.S. EPA, at the above address.

Regardless of whether you choose to request a hearing within the prescribed time limit following service of this Complaint and Compliance Order, you are extended an opportunity to request an informal settlement conference.

If you have any questions, or desire to request an informal conference for the purpose of settlement of this matter, please contact Mr. Paul Dimock, Hazardous Waste Enforcement Branch, U.S. EPA, 230 South Dearborn Street, Chicago, Illinois 60604. Mr. Dimock can be reached at (312) 886-4436.

Sincerely,

Basil G. Constantelos, Director
Waste Management Division

Enclosures

cc: David McCauley ✓
Grady McCauley Creative Graphics, Inc.
7390 Middlebranch Road
Middlebranch, Ohio 44652

Paula T. Cotter, Surveillance & Enforcement ✓
Section, OEPA

Mark Bergman, Northeast District Office, OEPA ✓

bcc: Pam Rekar, ORC ✓

HWEB Secretary ✓

Cindy Byron, OWPE (WH-527) ✓

Regional Hearing Clerk ✓

Susan Sylvester, 5WD ✓

5HE-12JCK:PDIMOCK:mholman:6-4437:5-17-85

6/27/85

6/27/85

MCS 6/28/85

	TYPIST	AUTHOR	OTHER STAFF	UNIT CHIEF	SECT. SEC'Y	SECT. CHIEF	HWEB CHIEF	WMD DIR
INIT. DATE	mh 6-28-85	PEN 6-20-85		SB 6-26-85		WEM 6/27/85	WEM 6/27/85	DAS 6/28

If you have any questions, or desire to request an informal conference for the purpose of settlement of this matter, please contact Mr. Paul Dimock, Hazardous Waste Enforcement Branch, U.S. EPA, 230 South Dearborn Street, Chicago, Illinois 60604. Mr. Dimock can be reached at (312) 886-4436.

Sincerely,

Basil G. Constantelos, Director
Waste Management Division

Enclosures

cc: David McCauley
Grady McCauley Creative Graphics, Inc.
7390 Middlebranch Road
Middlebranch, Ohio 44652

Paula T. Cotter, Surveillance & Enforcement Section, OEPA

Mark Bergman, Northeast District Office, OEPA

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION V

IN THE MATTER OF:	)	
	)	DOCKET No.:
GRADY MC CAULEY CREATIVE GRAPHICS, INC.	)	
7390 MIDDLEBRANCH ROAD	)	COMPLAINT, FINDINGS OF VIOLATIONS
MIDDLEBRANCH, OHIO 44652	)	AND COMPLIANCE ORDER
	)	
NON-NOTIFIER	)	

V-W- 85 R-35

This Complaint and Compliance Order is filed pursuant to Section 3008(a)(1) of the Resource Conservation and Recovery Act of 1976 as amended (RCRA), 42 U.S.C. §6928(a)(1) and the U.S. Environmental Protection Agency's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 CFR Part 22. The Complainant is the Director, Waste Management Division, United States Environmental Protection Agency, Region V (U.S. EPA). The Respondent is Grady McCauley Creative Graphics, Incorporated, located at 7390 Middlebranch Road, Middlebranch, Ohio 44652.

This Complaint is based on information available to U.S. EPA, including information in records and a compliance inspection conducted on February 9, 1984, by the Ohio Environmental Protection Agency (OEPA). At the time of the inspection, violations of applicable State and Federal statutes were identified.

Pursuant to Section 3008(a)(1) of RCRA, 42 U.S.C. §6928(a)(1), and based on information cited above, it has been determined that Grady McCauley Creative Graphics, Inc., has violated Sections 3005, and 3010 of RCRA, 42 U.S.C. §§6925, and 6930, regulations found at 40 CFR 124.3, 270.1, 270.10, and Ohio Administrative Code regulations 3745-52-10, 41, 3745-65-75, 94, 3745-66-43, 45 and 47.

JURISDICTION

Jurisdiction for this action is conferred upon U.S. EPA by Sections 1006(a), 2002(a)(1), 3006(b), and 3008(a)(2) of RCRA, 42 U.S.C. §6905(a), §6912(a)(1), §6926(b), and §6928(a)(2), respectively.

On July 15, 1983, the State of Ohio received Phase I interim authorization pursuant to Section 3006 of RCRA (42 U.S.C. §6926) to administer a hazardous waste program in lieu of the Federal program. This authorization allows either the State or U.S. EPA to enforce Ohio hazardous waste statutes and regulations, where applicable, in lieu of Federal statutes and regulations. U.S. EPA has retained authority in matters related to the issuance of RCRA permits. Accordingly, this Complaint and Compliance Order seeks to enforce both Federal and State regulations as applicable.

FINDINGS

This determination of violation is based on the following:

1. Section 3010(a) of RCRA, 42 U.S.C. §6930(a), requires any person who generates or transports hazardous waste or owns or operates a facility for the treatment, storage or disposal of hazardous waste (hereafter "facility") to notify U.S. EPA of such activity within 90 days of the initial promulgation of regulations under Section 3001 of RCRA. Section 3010 of RCRA also provides that no hazardous waste subject to regulations may be transported, treated stored, or disposed of unless the required notification has been given.

2. U.S. EPA published regulations under Section 3001 of RCRA on May 19, 1980. Notification to U.S. EPA of hazardous waste handling was required, in most instances, no later than August 18, 1980. These regulations, which

concern the identification and listing of hazardous waste, are codified at 40 CFR Part 261. Regulations regarding the generation, transportation, treatment, storage and disposal of hazardous waste were also published on May 19, 1980, and are codified at 40 CFR Parts 260 and 262 through 265.

3. Section 3005(a) of RCRA, 42 U.S.C. §6925(a), requires U.S. EPA to publish regulations requiring each person owning or operating a facility to obtain a RCRA permit. These regulations were published on May 19, 1980, and are codified at 40 CFR Parts 124, 270, and 271 (formerly Parts 122 and 123). The regulations require that owners or operators of existing facilities (as defined in Finding 4 below) submit Part A of the permit application, in most instances, no later than Novemnber 19, 1980.

4. Section 3005(e) of RCRA, 42 U.S.C. §6925(e), provides than an owner or operator of a facility shall be treated as having been issued a permit pending final administrative disposition of the permit application, provided that: (1) the facility was in existence on November 19, 1980 ("existing facility"); (2) the requirements of Section 3010(a) of RCRA concerning notification of hazardous waste activity have been met; and (3) timely application for a permit has been made. This statutory authority to operate is known as interim status. U.S. EPA regulations implementing these provisions are found at 40 CFR Part 270.70.

5. Respondent, Grady McCauley Creative Graphics, Inc., owns and operates an existing facility as that term is defined at 40 CFR Part 260.10, located at 7390 Middlebranch Road, Middlebranch, Ohio. Respondent is an Ohio corporation whose registered agent is Dennis J. Grady, 7390 Middlebranch Road, Middlebranch, Ohio 44652.

6. An inspection of the facility was conducted by a representative of the Ohio Environmental Protection Agency (OEPA) on February 9, 1984. At the time of the inspection, Respondent was storing hazardous waste in an underground tank, and disposed of hazardous waste by discharging it from the tank into the surrounding soil. The facility stored and disposed of hazardous wastes listed for ignitability and toxicity under 40 CFR 261 Subpart D, and Ohio Administrative Code 3745-51-31. These wastes are identified as spent non-halogenated solvents (U.S. EPA Hazardous Waste Numbers F003 and F005).

7. Respondent failed to file a notification with U.S. EPA of its hazardous waste activity, thus violating Section 3010(a) of RCRA which requires such notification to have been filed, on or before August 18, 1980.

8. Respondent has failed to submit to U.S. EPA a Part A permit application to treat, store, or dispose of hazardous waste, thus violating Section 3005(a) of RCRA and 40 CFR 124.3(a) and 270.10(a), which require such submission to have been made on or before November 19, 1980.

9. Interim status was not achieved because of Respondent's failure to comply with Section 3005(e) of RCRA. In addition, Respondent has neither applied for nor received a final RCRA permit for its storage and disposal activities. Respondent, therefore, is in violation of 40 CFR 270.1(c) and Section 3005(a) of RCRA.

10. The following violations were observed upon review of U.S. EPA and OEPA records:

(a) Failure to submit an annual report for generation, storage and disposal activities as required by Ohio Administrative Code 3745-52-41 and 3745-65-75;

(b) Failure to report groundwater monitoring information as required by Ohio Administrative Code 3745-65-94;

(c) Failure to establish financial assurance for closure and post-closure of the facility and liability insurance as required by Ohio Administrative Code 3745-66-43, 3745-66-45 and 3745-66-47; and

(d) Failure to obtain a U.S. EPA Identification Number as required by Ohio Administrative Code 3745-52-10.

ORDER

Respondent having been initially determined to be in violation of the above cited rules and regulations, the following Compliance Order pursuant to Section 3008(a)(1) of RCRA, 42 U.S.C. §6928(a)(1), is entered:

A. Respondent shall, within thirty (30) days of receipt of this Complaint and Compliance Order:

1. Submit to U.S. EPA and the OEPA, for the unpermitted storage and disposal areas, a closure plan which meets the requirements of Ohio Administrative Code 3745-66-10 through 3745-66-15. This closure plan must clearly detail the activities which will be undertaken by Respondent to identify, treat and/or remove and properly dispose of all hazardous waste at the facility including contaminated soil and groundwater. The closure plan shall include, but not be limited to:

   (a) A method of determining and notifying U.S. EPA and OEPA of the extent of contamination and/or migration of hazardous waste (or hazardous waste constituents) at the facility. Some type of groundwater monitoring shall be considered;

(b) The procedures to be used to treat and/or remove all hazardous waste and all standing liquids, groundwater, and underlying and surrounding soil which has been contaminated by hazardous waste (or hazardous waste constituents) disposed of at the facility;

(c) A description of the intended methods for management of the removed materials as well as a description of the location(s) to which said material will be ultimately disposed;

(d) A description of activities to be performed by Respondent which require the presence of, and observation by, an independent registered professional engineer. An independent registered professional enginer shall be present, at a minimum, during clean-up operations and containerization of all materials removed; and

(e) All other items required by Ohio Administrative Code 3745-66-12.

B. U.S. EPA and OEPA will approve, disapprove or modify the plan. Respondent shall perform all closure activities detailed in the closure plan as finally approved, within 90 days of its approval.

C. Upon completion of the required closure activities, Respondent shall certify in writing to U.S. EPA and OEPA that the facility has been closed in accordance with the specifications in the approved closure plan. Respondent shall also submit, or cause to have submitted to U.S. EPA and OEPA, written certification of the same from the independent registered professional engineer that observed the closure activities.

D. Respondent shall notify U.S. EPA in writing upon achieving compliance with this Order and any part thereof. This notification shall be submitted no later than the times stipulated above to Mr. Paul Dimock, U.S. EPA, Region V,

Waste Management Division, 230 South Dearborn Street, Chicago, Illinois, 60604, Attention: RCRA Enforcement Section. A copy of these documents and all correspondence with U.S. EPA regarding this Order shall also be submitted to Paula Cotter, Division of Solid and Hazardous Waste Management, Ohio Environmental Protection Agency, 361 East Broad Street, Columbus, Ohio 43216.

Notwithstanding any other provision of this Order, an enforcement action may be brought pursuant to Section 7003 of RCRA or other statutory authority where the handling, storage, treatment, transportation, or disposal of solid or hazardous waste at this facility may present an imminent and substantial endangerment to health or the environment.

PROPOSED CIVIL PENALTY

Based upon the seriousness of the violations cited herein, the potential harm to human health and the environment, and the continuing nature of the violations, the Complainant proposes, in accordance with U.S. EPA penalty policy guidance, to assess a civil penalty in the amount of NINE THOUSAND FIVE HUNDRED DOLLARS ($9,500) against the Respondent, Grady McCauley Creative Graphics, Inc., pursuant to Section 3008(c) and 3008(g) of RCRA (42 U.S.C. §6928).

Failure to comply with any requirements of this Order shall subject Respondent to liability for a civil penalty of up to TWENTY-FIVE THOUSAND DOLLARS ($25,000) for each day of continued non-compliance with the Order. U.S. EPA is authorized to assess such penalties pursuant to RCRA Section 3008(c).

NOTICE OF OPPORTUNITY FOR HEARING

Respondent is hereby notified that the above Order shall become final unless Respondent has requested in writing a hearing on the Order no later than 30 days from the date this Order is served. You have the right to request a

hearing to contest any factual allegation set forth in the Complaint or the appropriateness of any proposed compliance schedule or penalty. In the event that you wish to request a hearing, and to avoid having the Compliance Order become final without further proceedings, you must file a written answer to this Complaint with the Regional Hearing Clerk, U.S. EPA, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, within thirty (30) days of your receipt of this Notice. A copy of this answer and any subsequent documents filed in this action should also be sent to Ms. Pamela Rekar, Assistant Regional Counsel, at the same address.

Your answer should clearly and directly admit, deny, or explain each of the factual allegations of which you have knowledge. Said answer should contain: (1) a definite statement of the facts, circumstances, or arguments which constitute the grounds of defense, and (2) a concise statement of the facts which you intend to place at issue in the hearing. The denial of any material fact or the raising of any affirmative defense shall be construed as a request for a hearing.

A copy of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits (40 CFR Part 22 and 45 Federal Register 24367, April 4, 1980, as amended by 45 Federal Register 79898, December 2, 1980), accompanies this Complaint and Compliance Order. These regulations are applicable to this administrative action including the filing of any answer.

SETTLEMENT CONFERENCE

Whether or not you request a hearing, you may confer informally with U.S. EPA concerning: (1) whether the alleged violations in fact occurred as set forth above; (2) the appropriateness of the compliance schedule; and (3) the appropriateness of any penalty assessment in relation to the size of your business, the gravity of the violations, and the effect of the penalty on your ability to continue in business.

You may request an informal settlement conference at any time by contacting this office. However, any such request will not affect the thirty day time limit for responding to this Complaint and Compliance Order or requesting a formal hearing on the violations alleged herein. U.S. EPA encourages all parties to pursue the possibility of settlement through informal conferences. A request for an informal conference should be made in writing to Mr. Paul Dimock, Waste Management Division, at the address cited above, or by calling him at (312) 886-4436.

Dated this 28th day of June, 1985.

David G. Strimbu for
Basil G. Constantelos, Director
Waste Management Division
U.S. Environmental Protection Agency
Region V
Complainant

CERTIFICATE OF SERVICE

I hereby certify that I have caused a copy of the foregoing Complaint and Compliance Order to be served upon the persons designated below on the date below, by causing said copy to be deposited in the U.S. Mail, First Class and certified return receipt requested, postage prepaid, at Chicago, Illinois in an envelope addressed to:

Dennis J. Grady
President and Registered Agent for
Grady McCauley Creative Graphics, Inc.
P.O. Box 165
Middlebranch, Ohio 44652

and

David McCauley
Grady McCauley Creative Graphics, Inc.
7390 Middlebranch Road
Middlebranch, Ohio 44652

I have further caused the original of the Complaint and Compliance Order and this Certificate of Service to be served in the office of the Regional Hearing Clerk located in the Planning and Management Division, U.S. EPA, Region V, 230 South Dearborn Street, Chicago, Illinois 60604 on the date below.

These are said persons' last known addresses to the subscriber.

Dated this 28 day of June, 1985.

for
Secretary, Hazardous Waste Enforcement Branch
U.S. EPA, Region V

RCRA ENFORCEMENT ACTION SIGN-OFF Dimock / Rekar

PART I. BACKGROUND

FACILITY NAME GRADY McCAULEY, CREATIVE GRAPHICS INC.

FACILITY LOCATION MIDDLEBRANCH, OHIO

RCRA ID NUMBER NON-NOTIFIER

NATURE OF VIOLATION STORAGE & DISPOSAL W/o PERMIT OR INTERIM STATUS

SHIPMENT OFF SITE TO A NON-PERMITTED FACILITY VIA NON RCRA TRANSPORTER

ANY OTHER OUTSTANDING OR PAST ENFORCEMENT ACTIONS AGAINST THIS FACILITY:

WATER NONE

AIR NONE

OTHER NONE KNOWN

PART II. RECOMMENDATION ISSUE A 3008 COMPLAINT WITH PENALTY

PART III. CONCURRENCES ON DRAFT

	INITIALS	DATE	AGREE	DISAGREE
PREPARER	PEN	6-12-85	(✓)	( )
CHIEF, RCRA ENF. UNIT	DLB	6-12-85	(✓)	( )
CHIEF, RCRA ENF. SECTION	WEM	6-14-85	(✓)	( )
ASSISTANT REGIONAL COUNSEL Pamela Rekard RECV'd 6/20	PR	6/27/85 as modified	(✓)	( )

NAME & DATE OF STATE CONTACT NOTIFIED Paula Cotton 6-25-85

PART IV. APPROVAL

1. PREPARER	PEN	6-28-85	(✓)	( )
2. CHIEF, RCRA ENF. UNIT	DLB	6-28-85	(✓)	( )
3. CHIEF, RCRA ENF. SECTION	WEM	6-28-85	(✓)	( )
4. CHIEF, H.W. ENF. BRANCH / Acting	WEM	6-28-85	(✓)	( )
5. ASSISTANT REGIONAL COUNSEL Rekar		6/28/85	(✓)	( ) NOTE TYPO ON PG 2 OF ORDER
6. CHIEF, S.W. & E.R. SECTION		6/28	(✓)	( )
7. CHIEF, SOLID WASTE & EMER. RESPONSE BRANCH		6/28	(✓)	( )
8. REGIONAL COUNSEL (MES 6/28)		6/28	(✓)	( )
9. DIRECTOR, WASTE MGT. DIV.	DAS	6/28	(✓)	( )

NOTE: Attach sign-off sheet to yellow copy of the enforcement action.

Re: Dice Decal
Stark County

Dice Decal Corporation
P.O. Box 165
Middlebranch, Ohio 44652

August 24, 1984

Attn: Mr. David McCauley

Dear Sir:

On February 9, 1984, I conducted an inspection of your facility located at 7390 Middlebranch Road in Middlebranch, Ohio. On July 12, 1984, I returned for a follow-up visit. During both visits you represented the Dice Decal Corporation. During my February inspection it was agreed that Dice Decal generated a rinse water which contained MEK and other solvents. Approximately 500 to 1000 gallons of solvents were used each year. This rinse water drained into two 1000 gallon leaching wells. When the leaching wells filled to capacity (approximately 4 to 6 months), the Humbert Sanitary Company would remove the rinse water. According to the Ohio Hazardous Waste Regulation OAC 3745-51-03 (a)(2)(IV), this rinse water was a hazardous waste which was being stored and disposed of improperly.

During my July visit, you stated that Dice Decal has now completely estimated the use of MEK and the other solvents. Your facility is currently using a non-hazardous water based product to clean the silk screens. Therefore, your rinse water no longer qualifies as a hazardous waste. However, due to your past practice of leaching hazardous waste material into the soil, this office is requesting the following information:

1. A diagram of your leaching well system, which specifies where the leaching holes are located in each tank.

2. A map, plotting the location of the old and existing leaching wells in respect to the creek and your building.

3. One boring must be established within three feet of your current leaching wells. Another boring must be placed within three feet of your abandoned leaching wells. Both borings must be placed on the downgradient side of the ground water flow. Soil samples must be collected from each boring at depths of five (5) feet and eight (8) feet. Each sample must be tested for halogenated and non-halogenated solvent content.

Northeast District Office
2110 E. Aurora Road, Twinsburg, Ohio 44087-1969 (216) 425-9171

August 24, 1984

Please submit this required information to my attention at the Ohio EPA, Northeast District Office, within 45 days receipt of this letter. Then an evaluation can be made to determine if corrective actions will be necessary.

Please advise me at (216) 425-9171 if you have any questions.

Sincerely,

Mark Bergman

Mark Bergman, R.S.
Environmental Scientist
Division of Solid and Hazardous Waste Management
Northeast District Office

MB:kr

cc: Paula Cotter, DSHWM, Central Office
Douglas C. Hasbrouck, District Chief, Northeast District Office
Rebecca Strom, U.S. EPA - Region V

IN DATE Statement Dae: DEC 31 1983

DUNS: 00-446-8609
GRADY MC CAULEY CREATIVE
GRAPHICS (INC)
(FORMERLY DICE DECAL CORP)
+DICE DECAL CORP

BOX 165
MIDDLEBRANCH OH 44652
7390 MIDDLEBRANCH AVE
MIDDLEBRANCH OH 44652
TEL: 216 494-9444

DATE PRINTED
DEC 06 1984

MFG DECALS
SIC NO.
27 51

SUMMARY
RATING --

STARTED 1983
PAYMENTS SEE BELOW
SALES F $2,478,500
WORTH F $119,257
EMPLOYS 30
HISTORY CLEAR
FINANCING SECURED
CONDITION UNBALANCED

CHIEF EXECUTIVE: DENNIS J GRADY, PRES

SPECIAL
EVENTS
09/07/84 Name is correct as captioned.

PAYMENTS (Amounts may be rounded to nearest figure in prescribed ranges)

REPORTED	PAYING RECORD	HIGH CREDIT	NOW OWES	PAST DUE	SELLING TERMS	LAST SALE WITHIN
11/84	Ppt	1000	-0-	-0-		2-3 Mos
10/84	Ppt	50000	10000	-0-	N30	
	Ppt	1000	-0-	-0-	Prox	
08/84	Disc	500	-0-	-0-		4-5 Mos
	Ppt	750	-0-	-0-	N30	4-5 Mos
07/84	Ppt	500	100	-0-	N7	1 Mo
06/84	Disc-Ppt	5000	750	-0-	1 10 N30	1 Mo

FINANCE
* A FINANCIAL SPREAD SHEET OF COMPARATIVES, RATIOS, AND INDUSTRY AVERAGES *
* MAY BE AVAILABLE. ORDER A DUNS FINANCIAL PROFILE VIA YOUR DUNSPRINT *
* TERMINAL OR LOCAL D&B OFFICE *

09/07/84 Fiscal statement dated DEC 31 1983:

Cash	$ 150,867	Accts Pay	$	23,563
Accts Rec	378,029	Note-Curr		24,785
Inventory	101,591	Accruals		137,382
Advances	437	Taxes		5,614
		Sal Cont Agr Co		60,000
		Treas Stock Curr		55,500
Curr Assets	630,924	Curr Liabs		306,844
Fixt & Equip	122,932	Mortgages		40,190
CSV of Life Ins.	143,239	Note Def		532,661
Prepaid	7,482			
Sales Contr	580,000			
Agr Unam	000	L.T. Liab-Other		485,625
		CORP EQUITY		119,257

Total Assets	1,484,577	Total	1,484,577

1983 sales $2,478,500;.

Prepared from statement(s) by Accountant: Bruner, Cox, Lotz, Syler & Graves, CPA. Prepared from books without audit.

--O--

Monthly payments on note are $2,065. Treasury stock current $55,500 and deferred $485,625 is payable annually.

On AUG 24 1984 Dennis J Grady, president, deferred all information.

He deferred updated financial or operating information at this time.

PUBLIC FILINGS

UCC FILING

09/07/84 Financing Statement #P27516 filed 08-30-83 with Secretary, State of OH. Debtor: Subject, Middlebranch, OH. Secured Party: Harter Bank & Trust Co, Canton, OH. Collateral: all accounts receivable including proceeds and products.

09/07/84 Financing Statement #K34774 filed 12-08-80 with Secretary, State of OH. Debtor: Subject, Middlebranch, OH. Secured Party: Harter Bank & Trust Co, Canton, OH. Collateral: specified equipment including proceeds and products.

HISTORY

09/07/84

DENNIS J GRADY, PRES DAVID MC CAULEY, EX V PRES-TREAS
FRED HAUPT, SEC
DIRECTOR(S): THE OFFICER(S)

Incorporated Ohio Apr 1 1963. Authorized capital consists of 1,000 shares common stock, $100 par value.

Charter #319-082.

Business started 1963 by Robert Hattersley. Present control succeeded Sep 1 1983. 100% of capital stock is owned by officers. Purchase price $700,000 derived from $150,000 savings. Balance of $550,000 is in the form of treasury stock to be retired over 10 years. First payment of $55,000 is due the first year.

DENNIS J GRADY born 1938 married. 1958-60 Air Force. 1960-62 University of Minnesota. 1962-66 Kimbel Systems, Minneapolis, MN. 1966-72 K S C Industries. Milwaukee. WI. 1972-78 Kux Mfg. Detroit.